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The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

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Natural Resources**

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ISSUE DATE: JULY 16, 1990

Volume 5 • Issue 8 • Pages 514-603



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1988** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1988.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

Publication Schedule

(April 1990 - December 1991)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90
06/01/90	05/10/90	05/17/90	07/01/90	10/01/90
06/15/90	05/24/90	06/01/90	07/15/90	10/01/90
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11/15/91	10/24/91	10/31/91	12/15/91	03/01/92
12/02/91	11/07/91	11/14/91	01/01/92	04/01/92
12/16/91	11/21/91	12/02/91	01/15/92	04/01/92

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

**EXECUTIVE ORDER NUMBER 118
EXTENDING EXECUTIVE ORDER NUMBER 79
NORTH CAROLINA SMALL BUSINESS
COUNCIL**

WHEREAS, small business is a major contributor to the economic health of North Carolina; and

WHEREAS, it has made to appear to me that the North Carolina Small Business Council should continue;

THEREFORE, by the authority vested in me as Governor by the Constitution and laws of this State, IT IS ORDERED:

Executive Order Number 79, amended by Executive Order Number 84, is hereby extended and shall remain in effect until June 30, 1992, unless terminated earlier or extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this 12th day of June, 1990.

**EXECUTIVE ORDER NUMBER 119
ESTABLISHING THE NORTH CAROLINA
QUALITY LEADERSHIP AWARDS COUNCIL**

By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. The North Carolina Quality Leadership Awards Council is hereby established. The Council shall have the following subordinate committees:

- A. the Examination Board;
- B. the Recognition Committee; and
- C. such other committees as the Council shall create.

Section 2. Membership. The Council shall consist of not more than twenty (20) members, including:

- A. the Secretary of Economic and Community Development;
- B. the President of the University of North Carolina System;
- C. the President of the Community College System;
- D. the Science Advisor to the Governor;
- E. a member recommended by the Lieutenant Governor;
- F. a member recommended by the Speaker of the House;
- G. the President of North Carolina Citizens for Business and Industry;
- H. the President of the North Carolina Quality Leadership (NCQL) Foundation; and

- I. no more than twelve (12) ranking officials of Award recipient organizations, serving three year terms starting in the year subsequent to winning the Award.

Section 3. Chairmanship, Terms, and Vacancies. The Governor shall serve as Honorary Chairman. The North Carolina Quality Leadership Foundation will provide the Secretariat. All members under subsections (e), (f), and (i) above shall serve at the pleasure of the Governor. The Governor shall fill all vacancies and, if a vacancy occurs in a seat held by a member recommended by the Lieutenant Governor or the Speaker of the House, the Governor shall fill that vacancy after recommendation by the appropriate official.

Section 4. Purposes. The purposes of the Council shall be:

- A. to enhance education and training of management and workforce, both current and future;
- B. to improve competitiveness of North Carolina business and industry, especially supplier relationships;
- C. to encourage exchange of information toward quality improvement, especially through regional councils and industry associations; and
- D. to promote application of total quality management in North Carolina organizations.

Section 5. Duties of Council, Board, and Committees.

A. The North Carolina Quality Leadership Awards Council shall have the following responsibilities:

1. approve and announce Achievement Award and Honor Roll recipients in the categories of manufacturing and service industries, both large and small;
2. approve guidelines to examine applicant organizations;
3. approve appointments of judges and examiners;
4. arrange appropriate annual awards and recognition for recipients;
5. formulate recommendations for change in the form or coverage of awards, in cooperation with the North Carolina Quality Leadership Foundation; and
6. review related education, training, technology transfer, and research initiatives proposed by the North Carolina Quality Leadership Foundation.

B. The Council shall form an Examination Board and a Recognition Committee. It may form such other committees as necessary to evaluate and recognize quality leadership by North Carolina organizations.

C. The members of an Examination Board shall be drawn from professional and technical experts in total quality management and quality assurance related fields. Members shall be invited to serve by the Council and shall serve at its pleasure.

D. The members of the Recognition Committee shall be drawn from business, industry, education and government personnel concerned with award programs and public relations, especially representing industry associations and regional councils concerned with quality and productivity improvement. Members shall be invited to serve by the Council and shall serve at its pleasure.

E. The Examination Board shall:

1. conduct evaluation of applicant organizations by:
 - (a) selecting and nominating Examiners and Judges; and
 - (b) assessing applications, providing feedback, and conducting site visits of participating organizations;

2. recommend Award guidelines; and

3. nominate Award recipients.

F. The Recognition Committee shall be responsible to:

1. recommend the nature and types of physical awards; and
2. recommend the format and timing of ceremonies.

Section 6. Administrative Support. Operations support for the Council and Examination Board, including administrative and training activities, shall be provided by the NCQL Foundation staff. The Department of Economic and Community Development, the University of North Carolina System, and or the Community College System shall provide additional staff and administrative support on a voluntary basis.

Section 7. This Order shall become effective immediately and shall expire on June 30, 1993, unless extended or terminated by further Executive Order.

Done in Raleigh, North Carolina, this the 18th day of June, 1990.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Certificate of Need Section, Division of Facility Services, Department of Human Resources intends to adopt, amend, repeal rule(s) cited as 10 NCAC 3R .0305, .2101 - .2109, and .2113 - .2119.

The proposed effective date of this action is November 1, 1990.

The public hearing will be conducted at 1:00 p.m. on August 15, 1990 at Room 201, 701 Barbour Drive, Raleigh, N. C. 27603.

Comment Procedures: Written comments concerning the rules should be submitted as soon as possible but no later than August 15, 1990 to Lynda McDaniel at 701 Barbour Drive, Raleigh, N. C. 27603. Oral comments may be presented at the hearing.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .0300 - APPLICATION AND REVIEW PROCESS

.0305 FILING APPLICATIONS

(a) An application will not be reviewed by the agency until it is filed in accordance with this Rule.

(b) An original and a copy of the application shall be received by the agency no later than 5:00 p.m. on the last working day prior to 15 days before the first day of the scheduled review period. An application will not be included in a scheduled review if it is not received by the agency by this deadline. Each applicant shall transmit, with the application, a fee to be determined according to the following formula:

- (1) With each application proposing no capital expenditure or the addition of a sixth bed to an existing or approved five bed intermediate care facility for the mentally retarded, the proponent shall transmit a fee in the amount of four hundred dollars (\$400.00).
- (2) With each application, other than those referenced in (1) of this Rule, proposing a capital expenditure of up to, but not including, five hundred thousand dollars (\$500,000), the proponent shall transmit a fee in the amount of five hundred dollars

(\$500.00) one thousand dollars (\$1,000.00).

- (3) With each application, other than those referenced in (1) of this Rule, proposing a capital expenditure of five hundred thousand dollars (\$500,000) or greater, the proponent shall transmit a fee in the amount of five hundred dollars (\$500.00), one thousand dollars (\$1,000.00), plus an additional fee equal to .0015 .002 of the amount of the proposed capital expenditure in excess of five hundred thousand dollars (\$500,000). The additional fee shall be rounded to the nearest whole dollar. In no case shall the total fee exceed fifteen thousand dollars (\$15,000).

(c) After an application is filed, the agency shall determine whether it is complete for review. An application shall be complete unless:

- (1) the requisite fee has not been received by the agency; or
- (2) a signed original and copy of the application have not been submitted to the agency on the appropriate application form.

(d) If the agency determines the application is not complete for review, it shall mail notice of such determination to the applicant within five business days after the application is filed and shall specify what is necessary to complete the application. If the agency determines the application is complete, it shall mail notice of such determination to the applicant prior to the beginning of the applicable review period.

(e) Information requested by the agency to complete the application must be received by the agency no later than 5:00 p.m. on the last working day before the first day of the scheduled review period. The review of an application will commence in the next applicable review period that commences after the application has been determined to be complete.

(f) If an application is withdrawn by the applicant before the first day of the applicable review period, the application fee, if paid, will be refunded to the applicant.

Statutory Authority G.S. 131E-177; 131E-182; S.L. 1983, C. 713.

SECTION .2100 - CRITERIA AND STANDARDS FOR AMBULATORY SURGICAL SERVICES

- .2101 ENFORCEMENT BY STATE AGENCY (REPEALED)
- .2102 DEFINITIONS (REPEALED)
- .2103 SUBSTANTIAL EXPANSION OF SERVICES (REPEALED)

- .2104 CAPACITY IN THE FACILITY AND IN THE HEALTH SERVICE AREA (REPEALED)
- .2105 SCOPE OF SERVICES OFFERED (REPEALED)
- .2106 PROJECTED UTILIZATION (REPEALED)
- .2107 PROJECTED PATIENT ORIGIN (REPEALED)
- .2108 SITE AND EQUIPMENT (REPEALED)
- .2109 STAFFING (REPEALED)

Statutory Authority G.S. 131E-177(1).

.2113 DEFINITIONS

The following definitions will apply to all rules in this Section:

- (1) "Ambulatory surgical services" means those surgical services provided to patients as part of an ambulatory surgical program within a licensed ambulatory surgical facility or a general acute care hospital licensed under G.S. Chapter 131E, Article 5, Part A.
- (2) "Ambulatory surgical facility" means a facility licensed for the provision of an ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part D, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program and which are performed in a physician's or dentist's office does not make that office an ambulatory surgical facility.
- (3) "Ambulatory surgical program" means a formal program for providing on a same-day basis those ambulatory surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients in a licensed ambulatory surgical facility or in a general acute care hospital licensed under G.S. 131E, Article 5, Part A whose admission for more than 24 hours is determined, prior to surgery, to be medically unnecessary.

- (4) "Ambulatory surgical procedure" means a surgical procedure performed in a surgical operating room which requires local, regional or general anesthesia and a period of post-operative observation of less than 24 hours. Ambulatory surgical procedures exclude those procedures which are generally performed more than 50 percent of the time in a physician's office.
- (5) "Ambulatory surgical operating room" means a dedicated or shared operating room in a licensed ambulatory surgical facility or a general acute care hospital that is fully equipped to perform surgical procedures and is constructed to meet the specifications and standards appropriate to the type of facility as utilized by the Construction Section of the Division of Facility Services, including fire and life safety code requirements. Ambulatory surgical operating rooms exclude operating rooms dedicated for the performance of inpatient surgical procedures, cast rooms, procedure rooms that do not meet operating room specifications, suture rooms, YAG laser rooms, and cystoscopy and endoscopy procedure rooms that do not meet the specifications of an operating room.
- (6) "Existing ambulatory surgical operating rooms" mean only the ambulatory surgical operating rooms in ambulatory surgical facilities and hospitals reported on the License Application for Ambulatory Surgical Facilities and Programs and Part III of Hospital Licensure Renewal Application Form submitted to the Licensure Section of the Division of Facility Services and licensed and certified prior to the beginning of the review period.
- (7) "Approved ambulatory surgical operating rooms" mean only the ambulatory surgical operating rooms that have been approved for a certificate of need by the Certificate of Need Section prior to date on which the applicant's proposed project was submitted to the Agency but have not been licensed and certified, and ambulatory surgical operating rooms which the Certificate of Need Section determined were not subject to certificate of need review and are under construction prior to the date the applicant's proposal was submitted to the Agency.
- (8) "Dedicated ambulatory surgical operating room" means an ambulatory surgical operating room used solely for the performance of ambulatory surgical procedures.
- (9) "Shared surgical operating room" means an ambulatory surgical operating room that

is used for the performance of both ambulatory and inpatient surgical procedures.

- (10) "Specialty area" means an area of medical practice in which there is an approved medical specialty certificate issued by a member board of the American Board of Medical Specialties and includes, but is not limited to, the following: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, urology, orthopedics, and oral surgery.
- (11) "Practical utilization" is 4.8 surgical procedures per day for a dedicated ambulatory surgical operating room and 3.8 surgical procedures per day for a shared surgical operating room.
- (12) "Service area" means an area within approximately 30 road miles of the ambulatory surgical facility.
- (13) "Rule area" means a geographic area that is not defined as an urbanized area by the Bureau of the Census. An urbanized area comprises an incorporated place and adjacent densely settled surrounding area that together has a minimum population of at least 50,000.

Statutory Authority G.S. 131E-177; 131E-189(b).

.2114 INFORMATION REQUIRED OF APPLICANT

An applicant proposing to establish a new ambulatory surgical facility or increase the number of ambulatory surgical operating rooms in an existing ambulatory surgical facility or hospital shall provide the following information regarding the services to be offered in the facility following completion of the project:

- (1) the number and type of dedicated ambulatory surgical operating rooms,
- (2) the number and type of shared ambulatory surgical operating rooms,
- (3) the projected number of surgical procedures, identified by CPT code and ICD-9-CM procedure code, to be performed in the ambulatory surgical operating rooms,
- (4) the fixed and movable equipment to be located in each ambulatory surgical operating room,
- (5) the hours of operation of the ambulatory surgical program,
- (6) the projected average charge for the 20 most common surgical procedures proposed to be performed in the ambulatory surgical program and a list of all services and items included in each charge, and

- (7) other information as required in the application.

Statutory Authority G.S. 131E-177; 131E-189(b).

.2115 NEED FOR SERVICES

(a) An applicant proposing to establish a new ambulatory surgical facility in a rural area shall demonstrate that the new facility will not have a significant negative financial impact on existing ambulatory surgical programs located in the rural area.

(b) In projecting utilization for existing, approved, and proposed ambulatory surgical programs, a program shall not be considered to be open more than five days per week and 50 weeks per year.

(c) A proposal to establish a new ambulatory surgical facility or increase the number of ambulatory surgical operating rooms in an existing ambulatory surgical facility or hospital shall not be approved unless the applicant documents that the average number of ambulatory surgical procedures per ambulatory surgical operating room in the applicant's ambulatory surgical program are projected to be at practical utilization measured during the fourth quarter of the third year of operation following completion of the project.

(d) An applicant shall document the need for a new ambulatory surgical facility or an increase in the number of ambulatory surgical operating rooms by demonstrating that the number of existing and approved ambulatory surgical operating rooms in the proposed service area is not sufficient to meet the projected need for ambulatory surgical services in the proposed service area; or, alternatively, that the proposed project is needed because it will result in improved access to ambulatory surgical services by the medically underserved residents of the proposed service area. To demonstrate that:

- (1) the number of existing and approved ambulatory surgical operating rooms in the proposed service area is not sufficient to meet the projected need for ambulatory surgical services in the proposed service area the applicant shall document:

(A) each existing or approved ambulatory surgery program that performs ambulatory surgery in the same specialty area is reasonably projected to be at practical utilization prior to the completion of the proposed project, and

(B) all assumptions used in projecting the number of ambulatory surgical procedures to be performed in the new or expanded ambulatory surgical program and the need

for the additional operating rooms in the proposed service area;

- (2) the proposed project is needed because it will result in improved access to ambulatory surgical services by the medically underserved residents of the proposed service area, the applicant shall provide the following:

- (A) documentation that the medically underserved do not have adequate access to ambulatory surgical services because each existing or approved ambulatory surgical program performing ambulatory surgical procedures in the same speciality area:

- (i) has charges that are at least 30 percent higher than the average statewide charges for similar ambulatory surgical procedures as shown by documented patient charges for existing facilities and the projected charges for approved facilities and as shown by recognized sources of data on average statewide charges for ambulatory surgical procedures; or
- (ii) has admissions policies that are restrictive.

- (B) documentation that the proposed project will make ambulatory surgical services more accessible to the medically underserved population in the proposed service area by:

- (i) demonstrating that the facility or program will charge significantly less for similar ambulatory surgical procedures than is charged by each existing or approved ambulatory surgical program, if existence of high charges has been documented in accordance with this Rule, and
- (ii) demonstrating that the facility or program will establish a significantly less restrictive admissions policy for ambulatory surgical services than used by each existing or approved ambulatory surgical program, including assurance that uninsured persons, underinsured persons, and Medicaid recipients will be better served, if the existence of restrictive admissions policies is documented in accordance with this Rule.

- (C) documentation of all assumptions used in determining that current access to the medically underserved is restricted and that projected access will be improved and all assumptions used in projecting the

number of ambulatory surgical procedures to be performed and the number of new ambulatory surgical operating rooms to be established.

Statutory Authority G.S. 131E-177; 131E-189(b).

.2116 FACILITY

- (a) A licensed ambulatory surgical facility physically located within a physician's or dentist's office or within a general acute care hospital shall be a separately identifiable entity that is physically, administratively, and financially independent and distinct from other operations of the facility in which it is located.

- (b) An applicant proposing a facility shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within one year of completion of the facility.

- (c) An applicant proposing to establish a new ambulatory surgical facility or increase the number of ambulatory surgical operating rooms in an existing ambulatory surgical facility or hospital shall document that the physical environment of the facility conforms to the requirements of federal, state, and local regulatory bodies.

- (d) In competitive reviews, an applicant proposing to perform ambulatory surgical procedures in at least three speciality areas will be considered more favorably than an applicant proposing to perform ambulatory surgical procedures in fewer than three speciality areas.

- (e) The applicant shall provide a floor plan of the proposed facility clearly identifying the following areas:

- (1) receiving/registering area,
- (2) waiting area,
- (3) pre-operative area,
- (4) operating rooms by type,
- (5) recovery area, and
- (6) observation area.

Statutory Authority G.S. 131E-177; 131E-189(b).

.2117 ACCESSIBILITY TO SERVICES

- (a) An applicant proposing to establish a new ambulatory surgical facility or increase the number of ambulatory surgical operating rooms in an existing ambulatory surgical facility or hospital shall provide assurance that the facility, unless designated as a birthing center, will be certified for Medicaid and Medicare reimbursement upon completion of the project.

- (b) The applicant shall provide documentation describing the mechanism that will be used to

insure that the projected number of medically underserved will be served in the facility.

(c) The applicant shall provide a copy of the written admissions policies identifying any prepayment or deposit requirements for the facility and clearly stating the admissions requirements for the following payor categories:

- (1) private pay,
- (2) medicaid beneficiaries,
- (3) medicare beneficiaries,
- (4) uninsured indigent patients,
- (5) underinsured indigent patients, and
- (6) fully insured patients.

(d) The applicant shall provide a written description of the billing procedures, including the credit collection policies, that will be utilized by the facility.

(e) The applicant shall document that the health care community in the service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the facility's admissions policies for the medically underserved.

Statutory Authority G.S. 131E-177; 131E-189(b).

.2118 STAFFING

(a) An applicant proposing to establish a new ambulatory surgical facility or increase the number of ambulatory surgical operating rooms in an existing ambulatory surgical facility or hospital shall identify and justify the number of staff to be utilized in the following areas:

- (1) administration,
- (2) pre-operative care,
- (3) post-operative care,
- (4) operating room, and
- (5) other.

(b) The applicant shall estimate the number of physicians expected to utilize the facility and the criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel.

(c) The applicant shall provide documentation that physicians granted privileges to practice in the facility will be active members in good standing at a general acute care hospital or will have written referral procedures with a hospital in the proposed service area.

Statutory Authority G.S. 131E-177; 131E-189(b).

.2119 RELATIONSHIP TO SUPPORT AND ANCILLARY SERVICES

(a) An applicant proposing to establish a new ambulatory surgical facility or increase the num-

ber of ambulatory surgical operating rooms in an existing ambulatory surgical facility or hospital shall provide written policies and procedures demonstrating that the facility will have patient referral, transfer, and followup procedures.

(b) The applicant shall provide documentation showing the proximity of the proposed facility to the following services:

- (1) emergency services,
- (2) support services,
- (3) ancillary services, and
- (4) public transportation.

Statutory Authority G.S. 131E-177; 131E-189(b).

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to adopt rule(s) cited as 11 NCAC 6A .0801 - .0811.

The proposed effective date of this action is November 1, 1990.

The public hearing will be conducted at 1:00 p.m. on August 16, 1990 at 430 N. Salisbury Street, Dobbs Building, 3rd Floor Hearing Room, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to George Brown, Agent Services Division, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call George Brown at (919) 733-7487, or Ellen Sprenkel at (919) 733-4700.

CHAPTER 6 - AGENT SERVICES DIVISION

SUBCHAPTER 6A - AGENT SERVICES DIVISION

SECTION .0800 - CONTINUING EDUCATION

.0801 DEFINITIONS

As used in this Section:

- (1) "Course" means a continuing education course directly related to insurance principles and practices or a course designed and approved specifically for licensees; but does not mean a business course of a general nature or an insurance marketing or sales course.
- (2) "Credit hour" means a value assigned to a course by the Commissioner upon review and approval of course information.

- (3) "Disinterested third party" means a person not concerned, with respect to possible gain or loss, in the result of a pending course final examination; and means a person of no bias who is impartial and not prejudiced in favor of or against a licensee sitting for an examination.
- (4) "Distance learning" means an educational program in which the licensee and the instructor are in different physical locations and interact with each other through various methods of telecommunication.
- (5) "Instructor" means an individual who teaches, lectures, leads, or otherwise instructs a course.
- (6) "Licensee" means a duly licensed agent or broker who is required to comply with this Section.
- (7) "Supervised examination" means a timed, closed book examination that is monitored by a disinterested third party and graded by a nationally recognized insurance education program.
- (8) "Supervised individual study" means audio tapes, video tapes, computer programs, programmed learning courses, and similar types of learning experiences that are completed in the presence of an approved instructor.

Statutory Authority G.S. 58-33-130.

.0802 LICENSEE REQUIREMENTS

- (a) Life, accident, and health licensees shall obtain 12 credit hours during each calendar year in approved life, accident, and health courses, including mandatory statute and rule update.
- (b) Fire and casualty licensees shall obtain 12 credit hours during each calendar year in approved fire and casualty courses, including mandatory statute and rule update.
- (c) Accident and health licensees shall obtain 12 credit hours during each calendar year in approved accident and health courses, including mandatory statute and rules update.
- (d) Any person holding more than one license to which this Section applies shall meet the requirements for each such license each calendar year.
- (e) An instructor may receive up to twice the credit hours received by the students for some courses but may receive no credit hours for others, in the discretion of the Commissioner. An instructor shall teach at least 80 percent of the scheduled course hours in order to receive any credit.
- (f) Licensees shall not receive credit hours for instructing or taking or instructing and taking the same course more often than one time in any

three calendar year period except when there are major revisions within the course. The Commissioner shall determine whether the revisions are substantial enough to allow licensees to re-take or reinstruct an approved course within a three calendar year period.

(g) Licensees do not have to obtain credit hours for the calendar year in which they are initially licensed.

(h) Licensees shall receive credit hours for a course only for the calendar year in which the course is completed. Any course requiring an examination shall not be considered completed until the licensee passes the examination.

(i) Licensees shall not receive credit hours for courses completed prior to January 1, 1991.

(j) Licensees shall maintain records of all credit hours for three years following the obtaining of such credit hours, which records shall be available for inspection upon the Commissioner's request.

(k) Nonresident licensees who meet continuing education requirements in their home states meet the continuing education requirements of this Section. Nonresident licensees whose home states have no continuing education requirements shall meet the credit hour requirements of this Section.

(l) Courses completed prior to the issue date of a new license do not meet the requirements of this Section for that new license.

Statutory Authority G.S. 58-33-130.

.0803 COURSES SPECIFICALLY APPROVED

(a) Courses that are necessary to obtain the following nationally recognized designations are approved as they exist on the effective date of this Section for 20 credit hours upon successful completion of the national examination for each part:

- (1) Accredited Advisor in Insurance (AAI);
- (2) Associate in Claims (AIC);
- (3) Associate in Loss Control Management (AICM);
- (4) Associate in Risk Management (ARM);
- (5) Associate in Underwriting (AU);
- (6) Certified Employees Benefit Specialist (CEBS);
- (7) Chartered Financial Consultant (ChFC);
- (8) Chartered Life Underwriter (CLU);
- (9) Chartered Property and Casualty Underwriter (CPCU);
- (10) Fellow Life Management Institute (FLMI);
- (11) General Insurance (INS);
- (12) Life Underwriter Training Council Fellow, 26 week (LUTCF).

(b) Courses that are necessary to obtain the following nationally recognized designations are approved as they exist on the effective date of this Section for an amount of credit hours to be determined by the Commissioner's evaluation process:

- (1) Agency Management Training Course Graduate;
- (2) Certified Insurance Counselor (CIC);
- (3) Certified Insurance Service Representative (CISR);
- (4) Certified Professional Service Representative (CPSR);
- (5) Fraternal Insurance Counselor (FIC);
- (6) Health Insurance Associate (HIA);
- (7) Life Underwriter Training Council Fellow, 13 weeks (LUTCF);
- (8) Registered Health Underwriter (RHU).

(c) Courses that are taught by a college or university that is accredited by the Southern Association of Colleges and Schools are approved as they exist on the effective date of this Section for a number of credit hours to be determined by the Commissioner's evaluation process.

(d) The statute and rule update prepared by the Commissioner is approved as a mandatory component of each licensee's continuing education requirement for a number of credit hours to be determined annually by the Commissioner's evaluation process.

Statutory Authority G.S. 58-33-130.

.0804 CARRYOVER CREDIT

(a) No more than 75 percent of the credit hours required shall be carried forward from the previous year. Example: If 12 credit hours are required, only nine credit hours may be carried over to the next calendar year.

(b) Only whole credit hours can be carried over.

Statutory Authority G.S. 58-33-130.

.0805 CALCULATION OF CREDIT HOURS

The following standards shall be used to evaluate courses submitted for continuing education approval:

- (1) Programs requiring meeting or classroom attendance:
 - (a) Courses of less than 120 minutes will not be evaluated for continuing education credit hours.
 - (b) Courses will not be approved for less than one credit hour.
 - (c) One credit hour shall be awarded for each 60 minutes of instruction unless the Commissioner assigns fewer credit hours

based upon the evaluation of the submitted course materials. Courses will only be approved for whole credit hours.

(d) Course providers must properly monitor participants for attendance and attention.

(2) Independent study programs:

(a) Independent study programs qualify for continuing education only when there is a proctored examination administered by a disinterested third party, such as a testing center, and graded by the course provider. No examination administered or graded by insurance company personnel for its own employees will be considered to be administered by a disinterested third party.

(b) Only those courses that have been approved by the Commissioner in advance will be considered for credit hours.

(c) Each course shall be assigned a particular credit hour or hours and such credit hour or hours will be awarded upon the successful passing of such proctored examination.

(3) Distance Learning Programs:

(a) Distance learning qualifies only when an approved instructor is available to respond to questions and to maintain attendance records.

(b) Any organization sponsoring a teleconference shall have a person approved to be an on-site instructor.

Statutory Authority G.S. 58-33-130.

.0806 ATTENDANCE

(a) Meeting or classroom courses with no exam:

- (1) If four credit hours or less are assigned to a course, the licensee must attend 100 percent of the course to receive any credit.
- (2) If more than four credit hours are assigned to a course, the licensee must attend a minimum of 80 percent of the course to receive any credit.

(b) Meeting or classroom programs with exams:

- (1) If four credit hours or less are assigned to a course, the licensee must attend 100 percent of the course to receive any credit.
- (2) If more than four credit hours are assigned to a course, and the licensee passes the exam and attends at least 80 percent of the course, the licensee shall receive 100 percent of the credit hours assigned to the course.
- (3) If more than four credit hours are assigned to a course, and the licensee fails the exam

but attends at least 80 percent of the course, the licensee shall receive 50 percent of the credit hours assigned to the course.

Statutory Authority G.S. 58-33-130.

.0807 HARDSHIP

A licensee may appeal for relief to the Commissioner by January 15 of the year immediately following the calendar year for which the minimum required credit hours were not obtained. Upon a finding of reasonable cause, the Commissioner may extend the time for the licensee to complete the requirement.

Statutory Authority G.S. 58-33-130.

.0808 INSTRUCTOR QUALIFICATION

(a) Instructor qualification requirements shall be the same as those for lead instructors as provided in 11 NCAC 6A .0705(d)(1) and (2), except that the Commissioner may approve instructors possessing specific areas of expertise to instruct courses comprising those areas of expertise.

(b) Insurance company trainers as instructors must be full time salaried employees of the insurance company sponsoring the course and must have as part of their full time responsibilities the duty to provide insurance company training.

(c) College and university instructors may be full time or adjunct faculty of the accredited college or university, must be teaching a curriculum course in his or her field of expertise, and must meet the requirements of the association that accredits the college or university.

Statutory Authority G.S. 58-33-130.

.0809 APPROVAL OF COURSES

(a) Providers of all courses specifically approved under 11 NCAC 6A .0803 must file copies of program catalogs, course outlines, copies of advertising literature, the correct fee, and any other documents or related materials that the Commissioner requests, prior to January 1, 1991, and within 30 days of any changes to such programs in the future.

(b) All providers of courses not specifically approved under 11 NCAC 6A .0803 must do the following:

(1) Any individual, school, insurance company, insurance industry association, or other organization intending to provide classes, seminars, or other forms of instruction as approved courses shall apply on forms provided by the Commissioner;

pay the correct fee; and provide the requested number of copies of detailed outlines of the subject matter to be covered, copies of handouts to be given, the qualifications of each instructor, and other information requested by the Commissioner to support the request for approval.

(2) The outline shall include a statement of the method used to determine whether there will be meaningful attainments of education by licensees to be certified upon their satisfactory completion of the course. Such method may be a written examination, a written report, certification of attendance only, or other methods approved by the Commissioner. The outline shall describe the method of presentation.

(3) Providers of supervised individual study programs must file the requested number of copies of the study programs. Extra copies will be returned to a provider after course approval if a return fee is paid in advance.

(4) Such applications and accompanying information must be received by the Commissioner at least 30 days prior to the intended beginning date of the course.

(5) The Commissioner shall approve or deny the application; and shall indicate the number of credit hours that have been assigned to the course if approved. If a course is not approved or is disapproved within 60 days after receipt of all required information, the course is deemed to be approved at the end of the 60-day period.

(6) If a course approval application is denied, a written explanation of the reason for such action shall be furnished with the denial.

(c) Course approval applications must include all of the following forms and attached information in exactly the following order:

(1) A cover letter with payment of the fee, which fee is determined by the Commissioner, attached with separate paragraphs for the following:

- (A) a request that the course be evaluated;
- (B) for whom the course is designed;
- (C) the course objectives;
- (D) the names and duties of all persons who will be affiliated in an official capacity with the course; and
- (E) the course provider's tuition and fee refund policy.

(2) The course content outline with instruction hours assigned to the major topics;

- (3) Instructor qualification form and instructor resume if not previously approved; and
- (4) Schedule of dates, beginning and ending times and places the course will be offered, along with the names of instructors for each course session. Schedules shall be submitted at least 30 days in advance of any subsequent course offerings but it will not be necessary that courses be resubmitted unless there are substantial changes in content.
- (d) The Commissioner may waive this Section when it is deemed by the Commissioner to be necessary.
- (e) A provider may request that its materials be kept confidential if they are of a proprietary nature. The Commissioner will review and promptly return such extra copies of materials if a return fee is paid in advance.

Statutory Authority G.S. 58-33-130.

.0810 ADVERTISING

- (a) This Rule applies to for-profit course providers.
- (b) Courses shall not be advertised as approved for credit hours unless such approval has been granted by the Commissioner in writing.
- (c) When a course has been approved for credit hours and is advertised as such, the advertisement shall include:
 - (1) the number of approved credit hours;
 - (2) the type of licensee for whom the course would be most applicable; and
 - (3) all fees and associated expenses.
- (d) Advertisements shall be complete, truthful, clear, and not deceptive or misleading.
- (e) The Commissioner may withdraw his approval of any violator to provide or conduct courses.

Statutory Authority G.S. 58-33-130.

.0811 SANCTIONS FOR NONCOMPLIANCE

- (a) This Rule establishes sanctions for licensees who fail to complete their annual continuing education requirements and for licensees, course providers, and course provider personnel who falsify any records or documents in connection with the continuing education program or who do not comply with G.S. 58-33-125 or this Section.
- (b) The failure of a licensee to meet the annual continuing education requirement shall result in the nonrenewal of his or her license for the subsequent calendar year. To reapply, such person shall meet all requirements for new licensees.

(c) The Commissioner may suspend, revoke, or refuse to renew a license for any of the following causes:

- (1) Failure to timely respond to insurance department inquiries, including continuing education audit requests.
- (2) Requesting an extension or waiver under false pretenses.
- (3) Refusing to cooperate with insurance department employees in an investigation.
- (d) The Commissioner may suspend, revoke, or refuse to renew a course provider's authority to offer courses for any of the following causes:
 - (1) Advertising that a course is approved before the Commissioner has granted such approval in writing.
 - (2) Submitting a course outline with material inaccuracies, either in length, presentation time, or topic content.
 - (3) Presenting or using unapproved material in providing an approved course.
 - (4) Failing to conduct a course for the full time specified in the approval request submitted to the Commissioner.
 - (5) Preparing and distributing certificates of attendance or completion before the course has been approved.
 - (6) Issuing certificates of attendance or completion prior to the completion of the course.
 - (7) Failing to issue certificates of attendance or completion to any licensee who satisfactorily completes a course.
 - (8) Failing to promptly notify the Commissioner of suspected or known improper activities.
 - (9) Any violation of the North Carolina General Statutes or Administrative Code.
- (e) A course provider is responsible for the activities of persons conducting, supervising, instructing, proctoring, monitoring, moderating, facilitating, or in any way responsible for the conduct of any of the activities associated with the course.
- (f) In addition, the Commissioner may require any one of the following upon a finding of a violation of this Section:
 - (1) Refunding all course tuition and fees to licensees.
 - (2) Providing licensees with a suitable course to replace the course that was found in violation.
 - (3) Withdrawal of approval of courses sponsored by such provider for a period determined by the Commissioner.
- (g) The Commissioner may suspend, revoke, or refuse to renew the insurance licenses of pro-

vider personnel for noncompliance with G.S. 58-33-130 or this Section.

Statutory Authority G.S. 58-33-130.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to adopt rule(s) cited as 11 NCAC 11A .0501 - .0513.

The proposed effective date of this action is November 1, 1990.

The public hearing will be conducted at 1:00 p.m. on August 15, 1990 at 430 N. Salisbury Street, Dobbs Building, 3rd Floor Hearing Room, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Ray Martinez, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Ray Martinez at (919) 733-5633 or Ellen Sprengel at (919) 733-4700.

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11A - GENERAL PROVISIONS

SECTION .0500 - CPA AUDITS

.0501 PURPOSE AND SCOPE

(a) The purpose of this Section is to improve the Department's surveillance of the financial condition of insurers by requiring an annual examination by CPAs of the financial statements reporting the financial condition and the results of operations of insurers.

(b) This Section applies to all insurers; provided that insurers having direct premiums written in North Carolina of less than two hundred fifty thousand dollars (\$250,000) in any year and having less than 500 policyholders in North Carolina at the end of any year are exempt from this Section for such year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities.

(c) Insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports that has been found by the Commissioner to be substantially similar to the requirements of this Section, may be exempt from this Section if:

- (1) A copy of the Audited Financial Report and Report on Internal Control Structure Related Matters Noted in an Audit that are filed with such other state are filed with the Commissioner in accordance with the filing date specified in 11 NCAC 11A .0503 and 11 NCAC 11A .0510, respectively.
- (2) A copy of any Notification of Adverse Financial Condition Report filed with such other state is filed with the Commissioner within the time specified in 11 NCAC 11A .0509.

This Section does not prohibit, preclude, or in any way limit the Commissioner from ordering, conducting, or performing examinations of insurers under the General Statutes or this Title.

Statutory Authority G.S. 58-2-205.

.0502 DEFINITIONS

As used in this Section:

- (1) "Audited financial report" means those items specified in 11 NCAC 11A .0504.
- (2) "Commissioner" means the Commissioner of Insurance of North Carolina or his authorized representative.
- (3) "CPA" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice.
- (4) "Department" means the North Carolina Department of Insurance.
- (5) "Insurer" means a domestic insurer as defined in Article 7 and Article 15 of Chapter 58 of the General Statutes.

Statutory Authority G.S. 58-2-205.

.0503 FILING AND EXTENSIONS FOR FILING REPORTS

(a) All insurers shall have an annual audit by a CPA and shall file an audited financial report with the Commissioner on or before March 15 for the previous calendar year.

(b) Extensions of the March 15 filing date may be granted by the Commissioner for 30-day periods upon a showing by the insurer and its CPA the reasons for requesting such extension and a determination by the Commissioner of good cause for an extension. The request for extension must be submitted in writing not less than 15 days prior to the due date and must be in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

Statutory Authority G.S. 58-2-205.

.0504 CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT

(a) The annual Audited Financial Report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for such year in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department.

(b) The annual Audited Financial Report shall include the following:

- (1) Report of CPA.
- (2) Balance sheet reporting total assets, admitted assets, liabilities, capital and surplus.
- (3) Statement of gain or loss from operations.
- (4) Statement of cash flows.
- (5) Statement of changes in capital and surplus.
- (6) Notes to financial statements. These notes shall be those required by the annual statement and by generally accepted accounting principles and shall include:
 - (A) A reconciliation of differences, if any, between the audited statutory financial statements and the Annual Statement filed pursuant to G.S. 58-2-165 with a written description of the nature of these differences, and
 - (B) A narrative explanation of all significant intercompany transactions and balances.
- (7) The financial statements included in the Audited Financial Report shall be prepared in a form and using language and groupings the same as the relevant sections of the Annual Statement of the insurer filed with the Commissioner, and:
 - (A) The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31; provided, however, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.
 - (B) Amounts may be rounded to the nearest dollar.

Statutory Authority G.S. 58-2-205.

.0505 DESIGNATION OF CPA

(a) Each insurer required by this Section to file an annual audited financial report must within 60 days after becoming subject to such requirement, register with the Commissioner in writing the name and address of the CPA retained to

conduct the annual audit set forth in this Section. Insurers not retaining a CPA on the effective date of this Section shall register the name and address of their retained CPA not less than six months before the date when the first certification is to be filed.

(b) The insurer shall obtain a letter from such CPA, and file a copy with the Commissioner stating that the accountant is aware of the provisions of the North Carolina General Statutes and Administrative Code that relate to accounting and financial matters and affirming that he will express his opinion on the financial statements in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department, specifying such exceptions as he may believe appropriate.

(c) If a CPA who was not the CPA for the immediately preceding filed audited financial report is engaged to audit the insurer's financial statements, the insurer shall within 30 days of the date the CPA is engaged notify the Department of this event. The insurer shall also furnish the Commissioner with a separate letter stating whether in the 24 months preceding such engagement there were any disagreements with the former CPA on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The insurer shall also in writing request such former CPA to furnish a letter addressed to the insurer stating whether the CPA agrees with the statements contained in the insurer's letter, and, if not, stating the reasons for which he does not agree; and the insurer shall furnish such responsive letter from the former CPA to the Commissioner together with its own.

Statutory Authority G.S. 58-2-205.

.0506 QUALIFICATIONS OF INDEPENDENT CPA

(a) The Commissioner shall not recognize any person or firm as a CPA that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice.

(b) Except as otherwise provided in this Section, a CPA shall be recognized as independent as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of

Professional Conduct of the North Carolina Board of Public Accountancy, or similar code.

(c) The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing his opinion on the financial statements in the annual Audited Financial Report made pursuant to this Section and require the insurer to replace the CPA with another whose relationship with the insurer is independent within the meaning of this Section.

Statutory Authority G.S. 58-2-205.

.0507 APPROVAL OF CPA

(a) CPAs that practice pursuant to the provisions of this Section must file their intentions of such with the Department within 60 days of the effective date of this Section and thereafter by January 1 of each year. The Department may reject such filing if the CPA does meet its requirements. Inclusive within this filing must be evidence of the CPA's expertise in the areas of insurance auditing and insurance accounting. Such evidence must also demonstrate expertise in the areas of insurance auditing and insurance accounting for the staff assigned to the audit.

(b) The CPA will be deemed to be experienced in the areas of insurance auditing and accounting if the office filing with the Department pursuant to this Section has existing audit clients in the insurance industry.

(c) The staff assigned to an audit pursuant to this Section will be deemed to be experienced in the areas of insurance auditing and accounting as follows:

- (1) Managerial staff that has been assigned or has had responsibility for audit engagements in the insurance industry in an amount averaging at least 50 percent of their chargeable time during the last three years.
- (2) Nonmanagerial staff that has been assigned or has had responsibility for audit engagements in the insurance industry in an amount averaging at least 25 percent of their chargeable time during the last three years or during their period of employment if employed less than three years.

(d) An audit performed by a CPA pursuant to this Section shall be staffed by managerial staff experienced in the areas of insurance auditing and accounting and by majority non-managerial staff experienced in the areas of insurance auditing and accounting.

Statutory Authority G.S. 58-2-205.

.0508 SCOPE OF EXAMINATION AND REPORT OF CPA

Financial statements furnished pursuant to 11 NCAC 11A .0504 shall be examined by a CPA. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and such other procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the National Association of Insurance Commissioners as the CPA deems to be necessary. The Commissioner may, from time to time, prescribe that additional auditing procedures be observed by the CPA in the examination of the financial statements of insurers pursuant to this Section.

Statutory Authority G.S. 58-2-205.

.0509 NOTIFICATION OF ADVERSE FINANCIAL CONDITION

(a) The insurer required to furnish the annual Audited Financial Report shall require the CPA to immediately notify in writing an executive officer and all directors of the insurer of the final determination by that CPA that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements of Chapter 58 of the General Statutes as of that date. The insurer shall furnish such notification to the Commissioner within five days of receipt thereof.

(b) If the CPA, subsequent to the date of the Audited Financial Report filed pursuant to this Section, becomes aware of facts that might have affected his report, the Department notes the obligation of the CPA to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants.

Statutory Authority G.S. 58-2-205.

.0510 INTERNAL CONTROL STRUCTURE RELATED MATTERS

(a) In addition to the annual Audited Financial Report, each insurer shall furnish the Commissioner with a report of matters noted in an audit related to the internal control structure.

(b) A report of the evaluation by the CPA of the accounting procedures of the insurer and its system of internal control, including any remedial action taken or proposed, shall be filed annually by the insurer with the Department at the time

of the filing of the annual Audited Financial Report.

(c) Such report shall follow the Form for Reports on Internal Control Structure Related Matters Noted in an Audit described in Volume 1, Section AU 325, of the Professional Standards of the American Institute of Certified Public Accountants.

Statutory Authority G.S. 58-2-205.

.0511 CPA WORKPAPERS

(a) Workpapers are the records kept by the CPA of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his examination of the financial statements of an insurer. Workpapers, accordingly, may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules, or commentaries prepared or obtained by the CPA in the course of his examination of the financial statements of an insurer and that support his opinion thereof.

(b) Every insurer required to file an Audited Financial Report pursuant to this Section, shall require the CPA (through the insurer) to make available for review by Department examiners, the workpapers prepared in the conduct of his examination. The completed workpapers and any written communications between the CPA and the insurer relating to the audit of the insurer shall be made available for review by the Department at the offices of the insurer, at the Department, or at any other reasonable place as mutually agreed between the Department and the insurer. The insurer shall require that the CPA retain the audit workpapers for a period of not less than five years after the period reported thereon.

(c) In the conduct of any periodic review by the Department examiners, photocopies of pertinent audit workpapers may be made and retained by the Department.

Statutory Authority G.S. 58-2-205.

.0512 EXEMPTIONS AND EFFECTIVE DATES

(a) Upon written application of any insurer, the Commissioner may grant an exemption from compliance with this Section if the Commissioner finds, upon review of the application, that compliance with this Section would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from

this Section, such insurer may request in writing a hearing on its application for an exemption.

(b) Insurers retaining a CPA on the effective date of this Section who qualifies under this Section shall comply with this Section for the year ending December 31, 1990, and each year thereafter.

(c) Insurers not retaining a qualified CPA on the effective date of this Section may meet the following schedule for compliance, unless the Commissioner permits otherwise.

(1) As of December 31, 1990, file with the Commissioner:

(A) Report of CPA.

(B) Audited balance sheet.

(C) Notes to audited balance sheet.

(2) For the year ending December 31, 1990, and each year thereafter, such insurers shall file with the Commissioner all reports required by this Section.

Statutory Authority G.S. 58-2-205.

.0513 EXAMINATIONS

(a) The Commissioner shall determine the nature, scope, and frequency of examinations under this Section conducted by department examiners pursuant to G.S. 58-2-130. Such examinations may cover all aspects of the insurer's assets, condition, affairs, and operations; and may include and be supplemented by audit procedures performed by CPAs as provided in this Section. The type of examinations under the provisions of this Section performed by department examiners after the effective date of this Section shall be as follows:

(1) Comprehensive examinations will be performed when in the judgement of the Commissioner that a complete examination of the condition and affairs of the insurer is necessary.

(2) Compliance examinations may consist of a review of the accountant's workpapers defined under 11 NCAC 11A .0511 and a general review of the insurer's corporate affairs and insurance operations to determine compliance with the North Carolina General Statutes and this Title. The examiners may perform alternative or additional examination procedures to supplement those performed by the CPA when the examiners determine that such procedures are necessary to verify the financial condition of the insurer.

(3) Targeted examinations may cover such areas as life reserve valuations, claims analyses, organizational and capital changes,

and such other areas as the Commissioner deems to be appropriate.

(b) Upon completion of each examination described in this Rule, the examiner appointed by the Commissioner shall make a full and true report on the results of the examination. Each report shall include a general description of the audit procedures performed by the Department examiners and the procedures of the CPA that the examiners may have utilized to supplement their examination procedures and the procedures that were performed by the CPA if included as a supplement to the examination as provided in this Section.

Statutory Authority G.S. 58-2-205.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to repeal rule(s) cited as 11 NCAC 12 .0801 - .0814; and adopt rule(s) cited as 11 NCAC 12 .0815 - .0833.

The proposed effective date of this action is November 1, 1990.

The public hearing will be conducted at 10:00 a.m. on August 17, 1990 at 3rd Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Laurie Saxton, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Laurie Saxton at (919) 733-5060, or Ellen K. Sprengel at (919) 733-4700.

CHAPTER 12 - LIFE, ACCIDENT AND HEALTH DIVISION

SECTION .0800 - MEDICARE SUPPLEMENT INSURANCE

- .0801 PURPOSE (REPEALED)
- .0802 APPLICABILITY AND SCOPE (REPEALED)
- .0803 DEFINITIONS (REPEALED)
- .0804 POLICY DEFINITIONS AND TERMS (REPEALED)
- .0805 PROHIBITED POLICY PROVISIONS (REPEALED)
- .0806 MINIMUM BENEFIT STANDARDS (REPEALED)
- .0807 STANDARDS FOR CLAIMS PAYMENT

(REPEALED)

- .0808 LOSS RATIO STANDARDS (REPEALED)
- .0809 FILING REQUIREMENTS FOR OUT-OF-STATE GROUP POLICIES (REPEALED)
- .0810 PROHIBITED COMPENSATION FOR REPLACEMENT WITH THE SAME CO (REPEALED)
- .0811 REQUIRED DISCLOSURE PROVISIONS (REPEALED)
- .0812 REQUIREMENTS FOR REPLACEMENT (REPEALED)
- .0813 FILING REQUIREMENTS FOR ADVERTISING (REPEALED)
- .0814 FORMS (REPEALED)

Statutory Authority G.S. 58-9; 58-710; 58-711; 58-712; 58-713; 58-714; 58-715; 58-717.

.0815 PURPOSE

The purpose of these Rules is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare Supplement Policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare by reason of age.

Statutory Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25.

.0816 APPLICABILITY AND SCOPE

(a) Except as otherwise specifically provided in Title 11 NCAC 12 .0822 and 12 .0823, this Rule shall apply to:

- (1) All Medicare Supplement Policies and subscriber contracts delivered or issued for delivery in this state on or after the effective date hereof, and
- (2) All certificates issued under group Medicare Supplement Policies or subscriber contracts, which certificates have been delivered or issued for delivery in this state.

(b) This Rule shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members, or a combination thereof, of the labor organizations.

Statutory Authority G.S. 58-2-40; 58-54-5.

.0817 DEFINITIONS

For the purpose of these Rules:

- (1) "Applicant" means:
 - (a) in the case of an individual Medicare Supplement Policy or subscriber contract, the person who seeks to contract for insurance benefits, and
 - (b) in the case of a group Medicare Supplement Policy or subscriber contract, the proposed certificateholder.
- (2) "Certificate" means, for the purpose of these Rules, any certificate issued under a group Medicare Supplement Policy, which certificate has been delivered or issued for delivery in this state.
- (3) "Medicare Supplement Policy" means a group or individual policy of accident and health insurance or a subscriber contract of hospital and medical service corporations or health maintenance organizations which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age.

Statutory Authority G.S. 58-2-40; 58-54-1.

.0818 POLICY DEFINITIONS AND TERMS

No insurance policy or subscriber contract may be advertised, solicited or issued for delivery in this state as a Medicare Supplement Policy unless such policy or subscriber contract contains definitions or terms which conform to the requirements of this Section.

- (1) "Accident", "Accidental Injury", or "Accidental Means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.
 - (a) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."
 - (b) Such definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, unless prohibited by law.
- (2) "Benefit Period" or "Medicare Benefit Period" shall not be defined as more restric-

tive than as that defined in the Medicare program.

- (3) "Convalescent Nursing Home", "Extended Care Facility", or "Skilled Nursing Facility" shall be defined in relation to its status, facilities and available services.
 - (a) A definition of such home or facility shall not be more restrictive than one requiring that it:
 - (i) be operated pursuant to law;
 - (ii) be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;
 - (iii) be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;
 - (iv) provide continuous 24 hours a day nursing service by or under the supervision of a registered graduate profession nurse (R.N.); and
 - (v) maintain a daily medical record of each patient.
 - (b) The definition of such home or facility may provide that such term not be inclusive of:
 - (i) any home, facility or part thereof used primarily for rest;
 - (ii) a home or facility for the aged or for the care of drug addicts or alcoholics; or
 - (iii) a home or facility primarily used for the care and treatment of mental diseases or disorders, or custodial or educational care.
- (4) "Health Care Expenses" means expenses of health maintenance organizations associated with the delivery of health care services which are analogous to incurred losses of insurers. Such expenses shall not include:
 - (a) home office and overhead costs;
 - (b) advertising costs;
 - (c) commissions and other acquisition costs;
 - (d) taxes;
 - (e) capital costs;
 - (f) administrative costs; or
 - (g) claims processing costs.
- (5) "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.
 - (a) The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:
 - (i) be an institution operated pursuant to law; and
 - (ii) be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under

the supervision of a staff of duly licensed physicians, medical, diagnostic and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which charge is made; and

- (iii) provide 24 hour nursing service by or under the supervision of registered graduate professional nurses (R.N.s).
- (b) The definition of the term "hospital" may state that such term shall not be inclusive of:
 - (i) convalescent homes, convalescent, rest or nursing facilities; or
 - (ii) facilities primarily affording custodial, educational or rehabilitation care; or
 - (iii) facilities for the aged, drug addicts or alcoholics; or
 - (iv) any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.
- (6) "Medicare" shall be defined in the policy. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.
- (7) "Medicare Eligible Expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.
- (8) "Mental or Nervous Disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.
- (9) "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as Registered Graduate Professional Nurse (R.N.), a Licensed Practical

Nurse (L.P.N.), or a Licensed Vocational Nurse (L.V.N.). If the words "nurse", "trained nurse", or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualified under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state.

- (10) "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician". The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.
- (11) "Sickness" shall not be defined to be more restrictive than the following: "Sickness means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force". The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

Statutory Authority G.S. 58-2-40; 58-54-5; 58-54-10; 58-54-15.

.0819 PROHIBITED POLICY PROVISIONS

(a) No insurance policy or subscriber contract may be advertised, solicited or issued for delivery in this state as a Medicare Supplement Policy if such policy or subscriber contract limits or excludes coverage by type of illness, accident, treatment or medical condition, except as follows:

- (1) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;
- (2) mental or emotional disorders, alcoholism and drug addiction;
- (3) illness, treatment or medical condition arising out of:
 - (A) war or act of war (whether declared or undeclared); participation in a felony, riot or insurrection; service in the armed forces or units auxiliary thereto;
 - (B) suicide (sane or insane), attempted suicide or intentionally self-inflicted injury;
 - (C) aviation;

- (4) cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part;
- (5) care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effect thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column;
- (6) treatment provided in a governmental hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law; services rendered by employees of hospitals, laboratories or other institutions; services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;
- (7) dental care or treatment;
- (8) eye glasses, hearing aids and examination for the prescription or fitting thereof;
- (9) rest cures, custodial care, transportation and routine physical examinations;
- (10) territorial limitations outside the United States;

provided, however, supplemental policies may not contain, when issued, limitations or exclusions of the type enumerated in Paragraphs (a) (1), (5), (9), or (10) of this Rule that are more restrictive than those of Medicare. Medicare Supplement Policies may exclude coverage for any expense to the extent of any benefit available to the insured under Medicare.

(b) No Medicare Supplement Policy may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described pre-existing diseases or physical conditions.

(c) The terms "Medicare Supplement", "Medigap" and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

(d) No Medicare Supplement Insurance Policy, contract or certificate in force in the state shall contain benefits which duplicate benefits provided by Medicare.

Statutory Authority G.S. 58-2-40; 58-54-10.

.0820 MINIMUM BENEFIT STANDARDS

No insurance policy or subscriber contract may be advertised, solicited or issued for delivery in this state as a Medicare Supplement Policy which does not meet the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) General Standards. The following standards apply to Medicare Supplement Policies and are in addition to all other requirements of this regulation.

- (a) A Medicare Supplement Policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.
- (b) A Medicare Supplement Policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
- (c) A Medicare Supplement Policy shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.
- (d) A "noncancellable", "guaranteed renewable", or "noncancellable and guaranteed renewable" Medicare Supplement Policy shall not:
 - (i) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or
 - (ii) be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.
- (e) Except as authorized by the Commissioner of this state, an insurer shall neither cancel nor nonrenew a Medicare Supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.
- (f) If a group Medicare Supplement insurance policy is terminated by the group policyholder and not replaced as provided in Subparagraph (h) of this Rule, the insurer shall offer certificate holders an individual Medicare Supplement policy.

The insurer shall offer the certificateholder at least the following choices:

- (i) an individual Medicare Supplement policy which provides for continuation of the benefits contained in the group policy; and
- (ii) an individual Medicare Supplement policy which provides only such benefits as are required to meet the minimum standards.
- (g) If membership in a group is terminated, the insurer shall:
 - (i) offer the certificateholder such conversion opportunities as are described in Subparagraph (f) of this Rule; or
 - (ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.
- (h) If a group Medicare Supplement policy is replaced by another group Medicare Supplement policy purchased by the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.
- (i) Termination of a Medicare Supplement Policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.
- (2) Minimum Benefit Standards.
 - (a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
 - (b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;
 - (c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;
 - (d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare

subject to a lifetime maximum benefit of an additional 365 days;

- (e) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;
- (f) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [seventy-five dollars (\$75.00)] maximum benefit. Effective January 1, 1990, coverage for the coinsurance amount (20 percent) of Medicare eligible expenses for covered outpatient drugs used in immunosuppressive therapy subject to the Medicare deductible amount is included within this provision;
- (g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.
- (3) Medicare Eligible Expenses. Medicare eligible expenses shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.

Statutory Authority G.S. 58-2-40; 58-54-10; 58-54-15.

.0821 STANDARDS FOR CLAIMS PAYMENT

- (a) Every entity providing Medicare Supplement Policies or contracts shall comply with all provisions of Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203).
- (b) Compliance with the requirements set forth in Paragraph (a) of this Rule must be certified on the Medicare Supplement insurance experience reporting form.

Statutory Authority G.S. 58-2-40; 58-54-15.

.0822 LOSS RATIO STANDARDS

Medicare Supplement Policies shall return to policyholders in the form of aggregate benefits under the policy, for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices:

- (1) At least 75 percent of the aggregate amount of premiums earned in the case of group policies, and
- (2) At least 65 percent of the aggregate amount of premiums earned in the case of individual policies. All filings of rates and rating schedules shall demonstrate that actual and expected losses in relation to premiums comply with the requirements of this Section.
- (3) Every entity providing Medicare Supplement Policies in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by number of years of policy duration demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience. For the purposes of this Section, policy forms shall be deemed to comply with the loss ratio standards if:
 - (a) for the most recent year, the ratio of the incurred losses to earned premiums for policies or certificates which have been in force for three years or more is greater than or equal to the applicable percentages contained in this Section; and
 - (b) the expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this Section. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years.
- (4) As soon as practicable, but prior to the effective date of Medicare benefit changes, every insurer, health care service plan or other entity providing Medicare Supplement insurance of contracts in this state shall file with the Commissioner, in accordance with the applicable filing procedures of this state;
 - (a) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or

contracts. Such supporting documents as necessary to justify the adjustment shall accompany the filing, and

- (b) Every insurer, health care service plan or other entity providing Medicare Supplement insurance or benefits to a resident of this state pursuant to Article 54 of Chapter 58 of the North Carolina General Statutes shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for Medicare Supplement Policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer, health care service plan or other entity for such Medicare Supplement Insurance Policies or contracts. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date.
- (c) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare Supplement insurance modifications necessary to eliminate benefit duplications with Medicare. Any such endorsements or policy forms shall provide a clear description of the Medicare Supplement benefits provided by the policy or contract.

Statutory Authority G.S. 58-2-40; 58-54-20.

.0823 FILING REQUIREMENTS FOR OUT-OF-STATE GROUP POLICIES

Every insurer providing group Medicare Supplement insurance benefits to a resident of this state pursuant to Article 54 of Chapter 58 of the North Carolina General Statutes shall file a copy of the master policy and any certificate used in this state in accordance with the filing requirements and procedures applicable to group Medicare Supplement Policies issued in this state; provided, however, that no insurer shall be required to make a filing earlier than 31 days after insurance was provided to a resident of this state under a master policy issued for delivery outside this state.

Statutory Authority G.S. 58-2-40; 58-54-20.

.0824 REQUIRED DISCLOSURE PROVISIONS

- (a) General Rules.

- (1) Medicare Supplement Policies shall include a renewal or continuation provision. The language or specifications of such provisions must be consistent with the type of contract issued. Such provision shall be appropriately captioned and shall appear on the first page of the policy.
- (2) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare Supplement Policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits; all riders or endorsements added to a Medicare Supplement Policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare Supplement Insurance Policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.
- (3) A Medicare Supplement Policy which provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary" or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.
- (4) If a Medicare Supplement Policy contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations".
- (5) Medicare Supplement Policies or certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.
- (6) Insurers issuing accident and health policies, certificates or subscriber contracts which provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to persons eligible for Medicare by reason of age shall provide to all applicants a copy of the North Carolina Buyer's Guide and the Medicare Supplement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration. Delivery of the Buyer's Guide shall be made whether or not such policies, certificates or subscriber contracts are advertised, solicited or issued as Medicare Supplement Policies as defined in this Rule. Except in the case of direct response insurers, delivery of the Buyer's Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Buyer's Guide shall be obtained by the insurer. Direct response insurers shall deliver the Buyer's Guide to the applicant upon request but not later than at the time the policy is delivered.
 - (b) Notice Requirements.
 - (1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every insurer, health care service plan or other entity providing Medicare Supplement insurance or benefits to a resident of this state shall notify its policyholders, contract holders and certificate holders of modifications it has made to Medicare Supplement Insurance Policies or contracts in a format acceptable to the Commissioner or in the format prescribed in Title 11 NCAC 12 .0832 (Form A) if no other format is prescribed by the Commissioner as follows:
 - (A) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare Supplement Insurance Policy or contract, and
 - (B) Inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.
 - (2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.
 - (3) Such notices shall not contain or be accompanied by any solicitation.

(c) Outline of coverage requirements for Medicare Supplement Policies.

- (1) Insurers issuing Medicare Supplement Policies or certificates for delivery in this state shall provide an outline of coverage to all applicants at the time application is made and, except for direct response policies, shall obtain an acknowledgement of receipt of such outline from the applicant; and
- (2) If an outline of coverage is provided at the time of application and the Medicare Supplement Policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:
"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."
- (3) The outline of coverage provided to applicants pursuant to Paragraphs (1) and (2) shall be in the form prescribed below:

[COMPANY NAME]
OUTLINE OF MEDICARE
SUPPLEMENT COVERAGE AND
PREMIUM INFORMATION

Use this outline to compare benefits and premiums among policies.

- (A) Read your policy carefully - This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!
- (B) Medicare Supplement Coverage - Policies of this category are designed to supplement Medicare by covering some hospital, medical and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not

provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing and taking medicine [delete if such coverage is provided].

(C) (i) [for agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

(ii) [for direct responses:]

[insert company's name] is not connected with Medicare.

- (D) [A brief summary of the major medical benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles, as appropriate), provided by the Medicare Supplement coverage in the following order:]

DESCRIPTION

I. Minimum standards

SERVICE

PART A

INPATIENT HOSPITAL SERVICES:

Semi-Private Room & Board
Miscellaneous Hospital Services
& Supplies, such as Drugs,

X-Rays, Lab Tests & Operating Room

SKILLED NURSING FACILITY CARE

BLOOD

PART B

MEDICAL EXPENSE:

Services of a Physician/
Outpatient Services
Medical Supplies and other than
Prescribed Drugs

BLOOD

MISCELLANEOUS

Immunosuppressive Drugs

THIS POLICY PAYS**

YOU PAY

DESCRIPTION

II. Additional Benefits

PART A

Part A Deductible
Private Rooms
In-Hospital Private Nurses

PART A & B

Home Health Services

PART B

Part B Deductible
Medical Charges in Excess of
Medicare Allowable Expenses
(Percentage Paid)

OUT-OF-POCKET MAXIMUM

PRESCRIPTION DRUGS

MISCELLANEOUS

Respite Care Benefits
Expense Incurred in
Foreign Country

OTHER:

THIS POLICY PAYS YOU PAY
TOTAL PREMIUM \$ _____

IN ADDITION TO THIS OUTLINE OF COVERAGE, [INSURANCE COMPANY NAME] WILL SEND AN ANNUAL NOTICE TO YOU 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.

**If this policy does not provide coverage for a benefit listed in this Rule, the insurer must state "no coverage" beside that benefit in the first column.

- (E) Form A shall accompany the outline of coverage.
- (F) Statement that the policy does or does not cover the following:
 - (i) Private duty nursing;
 - (ii) Skilled nursing home care costs (beyond what is covered by Medicare);
 - (iii) Custodial nursing home care costs;
 - (iv) Intermediate nursing home care costs;
 - (v) Home health care above number of visits covered by Medicare;
 - (vi) Physician charges (above Medicare's reasonable charges);
 - (vii) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);
 - (viii) Care received outside the U.S.A.;
 - (ix) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.
- (G) A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits described in Paragraph (c)(3) of this Rule, including conspicuous statements:
 - (i) That the chart summarizing Medicare benefits only briefly describes such benefits.
 - (ii) That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.

(H) A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.

(I) The amount of premium for this policy.

(d) Notice regarding policies or subscriber contracts which are not medicare supplement policies. Any accident and health insurance policy or subscriber contract, other than a medicare supplement policy; or a policy issued pursuant to a contract under section 1876 of the Federal Social Security Act (42 U.S.C. 1395 et seq.), disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy or other policy identified Title 11 NCAC 12 .0816(2), issued for delivery in this state to persons eligible for Medicare by reason of age shall notify insureds under the policy or subscriber contract that the policy or subscriber contract is not a Medicare Supplement Policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate or subscriber contract delivered to insureds. Such notice shall be in no less than 12 point type and shall contain the following language:

"THIS [POLICY, CERTIFICATE OR SUBSCRIBER CONTRACT] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

Statutory Authority G.S. 58-2-40; 58-54-25.

.0825 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE

(a) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare Supplement insurance policy or certificate in force or whether a Medicare Supplement Policy or certificate is intended to replace any other accident and health policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing such questions may be used.

(1) Do you have another Medicare Supplement insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?

(2) Did you have another Medicare Supplement policy or certificate in force during the last 12 months?

(A) If so, with which company?

(B) If that policy lapsed, when did it lapse?

(3) Are you covered by Medicaid?

(4) Do you intend to replace any of your medical or health insurance coverage with this policy [certificate]?

(b) Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past five years which are no longer in force.

(c) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare Supplement Policy or certificate, a notice regarding replacement of accident and health coverage. One copy of such notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the insurer. A direct response insurer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of accident and sickness coverage.

(d) The notice required by Paragraph (c) of this Rule for an insurer, other than a direct response insurer, shall be provided in substantially the following form:

NOTICE TO APPLICANT REGARDING
REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE

(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE
IMPORTANT TO YOU IN THE FUTURE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing Medicare Supplement insurance and replace it with a policy to be issued by [company name] Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you and under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness coverage you now have, and terminate your present policy only if after due consideration, you find

that purchase of this Medicare Supplement coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT
[BROKER OR OTHER REPRESENTATIVE]:

(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

(1) Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) State law provides that your reinstituted or replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(3) If you are replacing existing Medicare Supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(4) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

Signature of Agent, Broker or Other Representative

Typed Name and Address of Agent or Broker

The above "Notice to Applicant" was delivered to me on:

(DATE)

(Applicant's Signature)

(c) The notice required by Paragraph (c) of this Rule for a direct response shall be as follows:

NOTICE TO APPLICANT REGARDING
REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE

(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE
IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished] you intend to lapse or otherwise terminate existing Medicare Supplement insurance and replace it with the policy delivered herewith issued by [company name] Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this Medicare Supplement coverage is a wise decision.

- (1) Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
- (2) State law provides that your reinstituted or replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. Your insurer will waive any time periods applicable to pre-

existing conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

- (3) If you are replacing existing Medicare Supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
- (4) [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [Company Name and Address] within 30 days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)

Statutory Authority G.S. 58-2-40; 58-54-25.

**.0826 FILING REQUIREMENTS FOR
ADVERTISING**

Every insurer, hospital or medical service corporation or health maintenance organization or other entity providing Medicare Supplement insurance or benefits in this state shall provide a copy of any Medicare Supplement advertisement intended for use in this state whether through written, radio or television medium to the Commissioner of Insurance of this State 90 days prior to its use for review or approval by the Commissioner as required under state law.

Statutory Authority G.S. 58-2-40; 58-54-35.

.0827 STANDARDS FOR MARKETING

(a) Every insurer, health care service plan or other entity marketing Medicare Supplement insurance coverage in this state, directly or through its producers, shall:

- (1) Establish marketing procedures to assure that any comparison of policies by its

agents or other producers will be fair and accurate.

- (2) Establish marketing procedures to assure excessive insurance is not sold or issued.
- (3) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:
"Notice to buyer: This policy may not cover all of the costs associated with medical care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."
- (4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare Supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.
- (5) Every insurer or entity marketing Medicare Supplement insurance shall establish auditable procedures for verifying compliance with this Paragraph (a).

(b) In addition to the practices prohibited in Article 63 of Chapter 58 of the North Carolina General Statutes, the following acts and practices are prohibited:

- (1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.
- (2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
- (3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

Statutory Authority G.S. 58-2-40.

.0828 APPROPRIATENESS OF RECOMMENDED PURCHASE AND EXCESSIVE INSURANCE

(a) In recommending the purchase or replacement of any Medicare Supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(b) Any sale of Medicare Supplement coverage which will provide an individual more than one Medicare Supplement policy or certificate is prohibited; provided, however, that additional Medicare Supplement coverage may be sold if, when combined with that individual's health coverage already in force, it would insure no more than 100 percent of the individual's actual medical expenses covered under the combined policies.

Statutory Authority G.S. 58-2-40.

.0829 REPORTING OF MULTIPLE POLICIES

(a) On or before March 1, every insurer or other entity providing Medicare Supplement insurance coverage in this state shall report the following information for every individual resident of this state for which the insurer or entity has in force more than one Medicare Supplement insurance policy or certificate:

- (1) Policy and certificate numbers, and
- (2) Date of issuance.

(b) The items set forth in this Rule must be grouped by individual policyholder.

Statutory Authority G.S. 58-2-40.

.0830 PROHIBITIONS IN REPLACEMENT POLICIES OR CERTIFICATES

If a Medicare Supplement policy or certificate replaces another Medicare Supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare Supplement policy for similar benefits to the extent such time was spent under the original policy.

Statutory Authority G.S. 58-2-40.

.0831 MEDICARE SUPPLEMENT ANNUAL REPORT

Each insurer shall report on or before July 1st of each year to the Commissioner the following:

- (1) policy or certificate plan name;
- (2) policy or certificate form number;
- (3) policy or certificate approval date;
- (4) number of insureds;
- (5) plans withdrawn from sale; and
- (6) insurer's address and telephone number.

Statutory Authority G.S. 58-2-40.

.0832 NOTICE FORMS

The notice required by 11 NCAC 12 .0824(b)(1) shall appear in the following format:

- (1) Form A is a notice that describes any changes in Medicare coverages for the current and following years and any resulting changes in Medicare Supplement coverage. This notice must include the name of the company issuing the policy as well as the agent who sells the Medicare Supplement policy.
- (2) All forms described in this Rule may be obtained in the Life, Accident and Health Division, North Carolina Department of Insurance, 430 N. Salisbury Street, Raleigh, North Carolina 27611, or by calling (919) 733-5060.

Statutory Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; 58-54-35.

.0833 BENEFIT CONVERSION REQUIREMENTS DURING TRANSITION

(a) Effective January 1, 1990, no Medicare Supplement insurance policy, contract or certificate in force in this state shall contain benefits which duplicate benefits provided by Medicare.

(b) Benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 transition provisions shall be restored.

(c) For Medicare Supplement policies subject to minimum standards adopted by the states pursuant to Medicare Catastrophic Coverage Act of 1988, the minimum benefits shall be:

- (1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
- (2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;
- (3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;
- (4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;
- (5) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal

regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

- (6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [seventy-five dollars (\$75.00)]. Included within this provision is coverage for the coinsurance amount (20 percent) of Medicare eligible expenses for covered outpatient drugs used in immunosuppressive therapy, subject to the Medicare deductible amount;
- (7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

(d) General Requirements.

- (1) No later than January 31, 1990, every insurer, health care service plan or other entity providing Medicare Supplement insurance or benefits to a resident of this state shall notify its policyholders, contract holders and certificate holders of modifications it has made to Medicare Supplement insurance policies or contracts. Such notice shall be in a format prescribed by the Commissioner or in the format adopted by the NAIC (Form A) if no other format is prescribed by the Commissioner.
- (A) Such notice shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare Supplement insurance policy or contract.
- (B) The notice shall inform each covered person as to when any premium adjustment due to changes in Medicare benefits will be effective.
- (C) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.
- (D) Such notice shall not contain or be accompanied by any solicitation.
- (2) No modifications to an existing Medicare Supplement contract or policy shall be made at the time of or in connection with the notice requirements of this Regulation

except to the extent necessary to accomplish the purposes of this Regulation.

(e) As soon as practicable, but no longer than 45 days after the effective date of the Medicare benefit changes, every insurer, health care service plan or other entity providing Medicare Supplement insurance or contracts in this state shall file with the Department, in accordance with the applicable filing procedure of this state:

- (1) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts. Such supporting documents as necessary to justify the adjustment shall accompany the filing.
- (2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare Supplement insurance modifications necessary to eliminate benefit duplications with Medicare and to provide the benefits required by Paragraphs (a), (b) and (c) of this Rule. Any such riders, endorsements or policy forms shall provide a clear description of the Medicare Supplement benefits provided by the policy or contract.

(f) Upon satisfying the filing [and approval] requirements of this state, every insurer, health care service plan or other entity providing Medicare Supplement insurance in this state shall provide each covered person with any rider, endorsement or policy form necessary to make the adjustments outlined in Paragraphs (a), (b) and (c) of this Rule.

(g) Any premium adjustments shall produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for Medicare Supplement policies and shall result in an expected loss ratio at least as great as that originally anticipated by the insurer, health care service plan or other entity for such Medicare Supplement insurance policies or contracts. Premium adjustments may be calculated for the period commencing with Medicare benefit changes.

Statutory Authority G.S. 58-2-40; 58-54-10.

SECTION .0900 - UTILIZATION REVIEW

The North Carolina Department of Insurance conducted a rules hearing on July 2, 1990, for rules 11 NCAC 12 .0901 through .0917. Utilization Review, as published in Volume 5, Issue 4 of the North Carolina Register. Because there have been substantial changes to these proposed rules, the Department will republish and set a

hearing date for the new proposed rules for Utilization Review organizations.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the EHNR - Environmental Management Commission intends to amend rule(s) cited as 15A NCAC 2D .0103, .0501, .0503, .0524 - .0525, .0530 - .0531, .0536, .0901 - .0902, .0912 - .0913, .0925 - .0926, .0928 - .0930, .0933, .0943; 2H .0601, .0607; and 2J .0002 - .0003.

The proposed effective date of this action is January 1, 1991.

The public hearing will be conducted at 2:00 p.m. on August 17, 1990 at Ground Floor Hearing Room, Archdale Building, 512 North Salisbury St., Raleigh, NC.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The record of proceedings will remain open for 30 days following the hearing to receive additional written statements. To be included, the statement must be received by the Department within 30 days after the hearing date.

Additional information concerning the hearing or the proposals may be obtained by contacting:

*Mr. Thomas C. Allen
Division of Environmental Management
P. O. Box 27687
Raleigh, North Carolina 27611-7687
(919) 733-3340*

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0100 - DEFINITIONS AND REFERENCES

.0103 COPIES OF REFERENCED FEDERAL REGULATIONS

- (a) Copies of applicable Code of Federal Regulations sections referred to in this Subchapter

are available for public inspection at Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources regional offices. They are:

- (1) Asheville Regional Office, Interchange Building, 59 Woodfin ~~Place, Street, Post Office Box 370,~~ Asheville, North Carolina ~~28802~~ 28801;

Statutory Authority G.S. 150B-14.

SECTION .0500 - EMISSION CONTROL STANDARDS

.0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS

(d) All existing sources of emission shall comply with applicable regulations and standards at the earliest possible date. ~~All sources shall be in compliance within three years from the approval of the state's implementation plan by the federal government unless a later date is set in the Regulation.~~ All new sources shall be in compliance prior to beginning operations.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0503 PARTICULATES FROM FUEL BURNING INDIRECT HEAT EXCHANGERS

(c) For the purpose of this Regulation, the maximum heat input shall be the total heat content of all fuels, excluding wood and refuse not burned as a fuel, which are burned in a fuel burning indirect heat exchanger and whose products of combustion pass through a stack or stacks. However, for residential facilities or institutions (such as military and educational) whose primary fuel burning capacity is for comfort heat, only those fuel burning indirect heat exchangers located in the same power plant or building or otherwise physically interconnected (such as common flues, steam, or power distribution line) shall be used to determine the total heat input. The total maximum heat input, excluding heat input from the combustion of wood and refuse not burned as a fuel, of all fuel burning indirect heat exchangers at a plant site in operation, under construction, or with a permit shall be used to determine the allowable emission limit of a fuel burning indirect heat exchanger. Fuel burning indirect heat exchangers constructed or permitted after February 1, 1983, shall not change the allowable emission limit of any fuel burning indirect heat exchanger whose allowable emission limit has previously been set. The removal of a fuel burning indirect heat exchanger shall not change the allowable emission limit of any fuel burning indirect heat exchanger whose

allowable emission limit has previously been set. When a fuel burning indirect heat exchanger has been removed, it shall no longer be considered in the determination of the allowable emission limit of any fuel burning indirect heat exchanger constructed after or in conjunction with the removal.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0524 NEW SOURCE PERFORMANCE STANDARDS

(a) Sources of the following types when subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with the emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable regulation in this Section or Section .0900 of this Subchapter which would be in conflict therewith:

- (61) volatile organic compound emissions from petroleum refinery wastewater systems (40 CFR 60.1 to 60.39 and 40 CFR 60.690 to 60.699, Subpart QQQ);
- (62) polymeric coating of supporting substrates facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.740 to 60.749, Subpart VVV).

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.107 (a) (5).

.0525 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(a) Sources emitting pollutants of the following types when subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable regulation in this Section or Section .0900 of this Subchapter which would be in conflict therewith:

- (10) inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities (40 CFR 61.01 to 61.19 and 61.180 to 61.189, Subpart P);
- (11) benzene emissions from coke by-product recovery plants (40 CFR 61.01 to 61.19 and 61.130 to 61.139, Subpart I);

(12) benzene emissions from benzene storage vessels (40 CFR 61.01 to 61.19 to 61.270, Subpart Y).

(b) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Regulation shall be submitted to the Environmental Management Commission rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR 61.145, 61.146, and 61.147, shall be submitted to the Director, Division of Epidemiology.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0530 PREVENTION OF SIGNIFICANT DETERIORATION

(g) Pursuant to 40 CFR 51.166(i) to include any later amendments. Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and by extension in 40 CFR 51.166(j) through (o). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Regulation. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Regulation, except as otherwise provided in this Regulation. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Regulation. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the state plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Regulation. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b).

.0531 SOURCES IN NONATTAINMENT AREAS

(c) This Regulation is not applicable to:

- (5) emission of the following volatile organic compounds:
 - (A) methane.
 - (B) ethane.

- (C) trichlorofluoromethane (chlorofluorocarbon 11),
- (D) dichlorodifluoromethane (chlorofluorocarbon 12),
- (E) chlorodifluoromethane (chlorofluorocarbon 22),
- (F) trifluoromethane (fluorocarbon 23),
- (G) trichlorotrifluoroethane (chlorofluorocarbon 113),
- (H) dichlorotetrafluoroethane (chlorofluorocarbon 114),
- (I) chloropentafluoroethane (chlorofluorocarbon 115),
- (J) 1,1,1-trichloroethane (methyl chloroform), ~~and~~
- (K) dichloromethane (methylene chloride),
- (L) dichlorotrifluoroethane (hydrochlorofluorocarbon 123).
- (M) tetrafluoroethane (hydrofluorocarbon 134a).
- (N) dichlorofluoroethane (hydrochlorofluorocarbon 141b), and
- (O) chlorodifluoroethane (hydrochlorofluorocarbon 142b).

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b).

.0536 PARTICULATE EMISSIONS FROM ELECTRIC UTILITY BOILERS

(b) Notwithstanding Regulation .0503 of this Section, emissions of particulate matter from the utility boiler units specified in the following table shall not exceed the maximum emission rate in the table as measured by a stack test conducted in accordance with Regulation .0501 of this Section. The results of any stack test shall be reported within 30 days, and the test report shall be submitted within 60 days after the test. In addition to limitations contained in Regulation .0521 of this Section, visible emissions from the utility boiler units specified in the table shall not exceed the annual average opacity limits in the table. Each day an annual average opacity value shall be calculated for each unit for the most recent 365-day period ending with the end of the previous day. The average is the sum of the measured non-overlapping six-minute averages of opacity determined only while the unit is in operation divided by the number of such measured non-overlapping six-minute averages. Start-up, shut-down, and non-operating time shall not be included in the annual average opacity calculation, but malfunction time shall be included. Regulation .0535 of this Section notwithstanding. The Director may approve an alternate method of calculating the annual average opacity if:

PROPOSED RULES

(1) the alternate method is submitted by the electric utility company,			2
(2) the Director concludes that the alternate method will not cause a systematic or unacceptable difference in calculated values from the specified method, and		Cape Fear	5
(3) it is mutually agreed that the values calculated using the alternate method can be used for enforcement purposes.			6
		Lee	1
			2
			3
		Roxboro	1
			2
			3
		Sutton	1
			2
			3
		Weatherspoon	1
			2
			3
Facility	Boiler Unit		
Duke Power Company		Maximum Emission Rate (lb Million BTU of Heat Input)	Annual Average Opacity Limit (Percent)
Allen	1		
	2		
	3		
	4		
	5		
Belews Creek	1	0.25	20
	2	0.25	20
Buck		0.25	13
	5	0.25	14
	6	0.25	17
	7		
	8	0.15	17
Cliffside	9	0.15	17
	1	0.15	10
	2	0.15	10
	3	0.15	6
	4	0.15	8
Dan River	5	0.15	10
	1	0.25	8
	2	0.25	12
Marshall	3	0.25	8
		0.25	8
	1	0.25	16
	2		
	3	0.15	7
Riverbend	4	0.15	9
		0.25	20
	4		
	5	0.20	20
	6	0.20	20
Carolina Power & Light Company Asheville	7	0.18	20
		0.18	20
	1		

0.12	8
0.12	8
0.12	8
0.12	8
0.20 0.12	10
0.20 0.12	5
0.20	17
0.20	15
0.25	18
0.13	11
0.25	15
0.25	15
0.16	20
0.10	25
0.13 0.11	14
0.20 0.11	14
0.18 0.11	20
0.14	8
0.14	10
0.25 0.15	23

Statutory Authority G.S. 143-215.3(a)(1);
143-215.107(a)(5).

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

.0901 DEFINITIONS

For the purpose of this Section, the following definitions apply:

- (28) "Volatile organic compound" (also denoted as VOC) means any compound of carbon whose volatile content can be determined by the procedure described in Regulation .0913 or .0939 of this Section excluding:
- (a) carbon monoxide,
 - (b) carbon dioxide,
 - (c) carbonic acid,
 - (d) metallic carbides or carbonates,
 - (e) ammonium carbonate,
 - (f) methane,
 - (g) ethane,
 - (h) trichlorofluoromethane (chlorofluorocarbon 11),
 - (i) dichlorodifluoromethane (chlorofluorocarbon 12),
 - (j) chlorodifluoromethane (chlorofluorocarbon 22),
 - (k) trifluoromethane (fluorocarbon 23),

- (l) trichlorotrifluoroethane (chlorofluorocarbon 113),
- (m) dichlorotetrafluoroethane (chlorofluorocarbon 114),
- (n) chloropentafluoroethane (chlorofluorocarbon 115),
- (o) 1,1,1-trichlorethane (methyl chloroform), and
- (p) dichloromethane (methylene chloride),
- (q) dichlorotrifluoroethane (hydrochlorofluorocarbon 123),
- (r) tetrafluoroethane (hydrofluorocarbon 134a),
- (s) dichlorofluoroethane (hydrochlorofluorocarbon 141b), and
- (t) chlorodifluoroethane (hydrochlorofluorocarbon 142b).

Statutory Authority G.S. 143-215.3(a)(1).

.0902 APPLICABILITY

(c) The following will not be considered volatile organic compounds:

- (1) methane,
- (2) ethane,
- (3) trichlorofluoromethane (chlorofluorocarbon 11),
- (4) dichlorodifluoromethane (chlorofluorocarbon 12),
- (5) chlorodifluoromethane (chlorofluorocarbon 22),
- (6) trifluoromethane (fluorocarbon 23),
- (7) trichlorotrifluoroethane (chlorofluorocarbon 113),
- (8) dichlorotetrafluoroethane (chlorofluorocarbon 114), and
- (9) chloropentafluoroethane (chlorofluorocarbon 115),
- (10) 1,1,1-trichlorethane (methyl chloroform), and
- (11) dichloromethane (methylene chloride).

(c) ~~(4)~~ Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Regulation .0518, .0524, or .0525 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1);
143-215.107(a)(5).

.0912 GENERAL PROVISIONS ON TEST METHODS AND PROCEDURES

(a) The owner or operator of any volatile organic compound source required to comply with regulations in this Section shall, at his own expense, demonstrate compliance by the methods described in Regulations .0912 through .0916 and

.0939 through .0942 of this Section. ~~or an alternative method approved by the director.~~ No owner or operator, however, shall be required to demonstrate compliance with regulations in this Section unless the director requests such demonstration. The director shall explain to the owner or operator the basis for requesting a demonstration of compliance and shall allow reasonable time for testing to be performed. All tests shall be made by, or under the direction of, a person qualified by training and/or experience in the field of air pollution testing.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0913 DETERMINATION OF VOLATILE CONTENT OF SURFACE COATINGS

(a) In accordance with Regulation .0912 of this Section, the volatile matter content, water content, density, volume of solids and weight of solids of surface coatings shall be determined by the procedures set forth in Method 24 of Appendix A of 40 CFR Part 60. Compounds exempted under Paragraph ~~(c)~~ of Regulation .0902 (2S) of Regulation .0901 of this Section shall be treated as water. The results of the tests shall be expressed in the same units as the emission limits given in the regulation for which compliance is being determined.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0925 PETROLEUM LIQUID STORAGE IN FIXED ROOF TANKS

(d) With the exceptions stated in Paragraph (c) of this Regulation, the owner or operator of any fixed roof storage vessel subject to this Regulation shall not use the storage vessel unless:

- (1) The storage vessel has been retrofitted with ~~(A)~~ an internal floating roof equipped with a closure seal, or seals, to close the space between the roof edge and tank wall; ~~or~~
- ~~(B)~~ an equally effective alternative control, approved by the Director;

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0926 BULK GASOLINE PLANTS

(g) Vapor balance systems required under Paragraphs (d) and (e) of this Regulation shall consist of the following major components:

- (1) a vapor space connection on the stationary storage tank equipped with fittings which are vapor tight and will be immediately

closed upon disconnection so as to prevent release of organic material; ~~and~~

- (2) a connecting pipe or hose equipped with fittings which are vapor tight and will be immediately closed upon disconnection so as to prevent release of organic material; ~~and~~
- (3) a vapor space connection on the tank truck or trailer equipped with fittings which are vapor tight and will be immediately closed upon disconnection so as to prevent release of organic material. ~~or~~
- ~~(4) a system demonstrated to have control efficiency equivalent to or greater than provided under Subparagraphs (g)(1) through (g)(3) of this Paragraph and approved by the Director.~~

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0928 GASOLINE SERVICE STATIONS STAGE I

(e) The vapor control system required by Paragraph (d) of this Regulation shall include one or more of the following:

- (1) a vapor-tight line from the storage tank to the delivery vessel and a system which will ensure the vapor line is connected before gasoline can be transferred into the tank; ~~or~~
- (2) a refrigeration-condensation system or equivalent designed to recover at least 90 percent by weight of the organic compounds in the displaced vapor. ~~or~~
- ~~(3) a system demonstrated to have control efficiency equivalent to or greater than provided under Subparagraph (1) or (2) of this Paragraph and approved by the Director.~~

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0929 PETROLEUM REFINERY SOURCES

(d) The emission limit required by Paragraph (c) of this Regulation shall be achieved by:

- (1) piping the noncondensable vapors to a firebox or incinerator; ~~or~~
- (2) compressing the vapors and adding them to the refinery fuel gas. ~~or~~
- ~~(3) a control system demonstrated to have control efficiency equivalent to or greater than Subparagraph (1) or (2) of this Paragraph and approved by the Director.~~

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0930 SOLVENT METAL CLEANING

(e) With the exception stated in Paragraph (c) of the Regulation, the owner or operator of an open top vapor degreaser shall:

(3) install one of the following control devices:

(A) freeboard ratio greater than or equal to 0.75. If the degreaser opening is greater than 10.8 square feet, the cover must be powered;

(B) refrigerated chiller;

(C) enclosed design (The cover or door opens only when the dry part is actually entering or exiting the degreaser.); or

(D) carbon adsorption system, with ventilation greater than or equal to 50 cubic feet per minute per square foot of air/vapor area (when cover is open), and exhausting less than 25 parts per million of solvent averaged over one complete adsorption cycle; ~~or~~

~~(E) a control system, demonstrated to have control efficiency equivalent to or greater than any listed in Parts (A) through (D) of this Subparagraph, and approved by the Director;~~

(f) With the exception stated in Paragraph (c) of this Regulation, the owner or operator of a conveyORIZED degreaser shall:

(2) install one of the following control devices:

(A) refrigerated chiller; or

(B) carbon adsorption system, with ventilation greater than or equal to 50 cubic feet per minute per square foot of air/vapor area (when downtime covers are open), and exhausting less than 25 parts per million of solvent by volume averaged over a complete adsorption cycle; ~~or~~

~~(C) a system, demonstrated to have a control efficiency equivalent to or greater than Parts (A) or (B) of this Subparagraph, and approved by the Director;~~

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0933 PETROLEUM LIQUID STORAGE IN EXTERNAL FLOATING ROOF TANKS

(f) Notwithstanding the definition of volatile organic compound found in ~~Regulation .0901(32)~~ Regulation .0901(28) of this Section, the owner or operator of a petroleum liquid storage vessel with an external floating roof not equipped with a secondary seal or approved alternative, that contains a petroleum liquid with a true vapor pressure greater than 1.0 pounds per

square inch shall maintain records of the average monthly storage temperature, the type of liquid, throughput quantities, and the maximum true vapor pressure for all petroleum liquids with a true vapor pressure greater than 1.0 pounds per square inch.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0943 SYNTHETIC ORGANIC CHEMICAL AND POLYMER MANUFACTURING

(a) For the purposes of this Regulation, the following definitions apply:

(8) "Process unit" means equipment assembled to produce, as intermediates or final products, polyethylene, polypropylene, polystyrene, or one or more of the chemicals listed in ~~Appendix E of 40 CFR Part 60 as of October 1, 1981.~~ 40 CFR 60.489. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the final product.

(10) "Synthetic organic chemical manufacturing" means the industry that produces, as intermediates or final products, one or more of the chemicals listed in ~~Appendix E of 40 CFR Part 60 as of October 1, 1981.~~ 40 CFR 60.489.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

SUBCHAPTER 21I - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0600 - AIR QUALITY PERMITS

.0601 PURPOSE AND SCOPE

(a) The following sources or activities are not likely to contravene any applicable ambient air quality or emission control standard, and therefore, are not required to obtain a permit:

(6) maintenance or repair ~~or replacement~~ of existing equipment that does not result in an increase to the emission of air pollutants;

(7) replacement of existing equipment with like equipment of same size, type, and function that does not result in an increase to the emission of air pollutants and that is described by the current permit, including the application, except for characteristics that could not affect pollution control, for example, serial numbers;

(8) ~~(7)~~ smudge pots for orchards or small outdoor heating devices to prevent freezing of plants;

- (9) ~~(8)~~ fuel burning equipment firing exclusively gaseous fuel with the total heat input rating of 250 million BTU per hour or less;
- (10) ~~(9)~~ fuel burning equipment firing exclusively No. 1 or No. 2 fuel oil with the total heat input rating of 100 million BTU per hour or less;
- (11) ~~(10)~~ fuel burning equipment firing a mixture, of gaseous fuel, No. 1 fuel oil or No. 2 fuel oil, in any proportion, with the total heat input rating of 100 million BTU per hour or less.

(e) Any exemption allowed by Paragraph (a) or (b) of this Rule does not apply to sources subject to 15A NCAC 2D .0524, .0525, or .0530. The owner or operator of these sources shall obtain a permit before beginning construction or operation.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

.0607 COPIES OF REFERENCED DOCUMENTS

(a) Copies of applicable Code of Federal Regulations sections referred to in this Section and the North Carolina State Implementation Plan for Air Quality appendix of conditioned permits are available for public inspection at Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources regional offices. They are:

- (1) Asheville Regional Office, Interchange Building, 59 Woodlin Street, ~~Post Office Box 370, Place,~~ Asheville, North Carolina ~~28802; 28801;~~

Statutory Authority G.S. 150B-14.

SUBCHAPTER 2J - CIVIL PENALTIES

.0002 DEFINITIONS

The terms used herein shall be as defined in G.S. 143-213, G.S. 143-215.77, and as follows:

- (3) "Director" means the Director, Division of Environmental Management; except with regard to dam safety violations, it shall mean the Director, Division of Land Resources; and with regard to violations of 40 CFR 61.19, 61.145, 61.146, and 61.147 as adopted at 15A NCAC 2D .0525(a)(1), it shall mean the Director of the Division of Epidemiology; provided that the definitions of 40 CFR 61.01, 61.03, and 61.141 shall apply to these Sections.

Statutory Authority G.S. 143-215.3(a)(1); 143-213(18); 143-212(6); 143-214.2.

.0003 WHO MAY ASSESS

Civil penalties may be assessed by the Commission or by the Director, except for dam safety violations, which civil penalties may be assessed by the Commission or by the Director, Division of Land Resources, and except for violations of asbestos demolition and renovation requirements of 40 CFR 61.145, 61.146, and 61.147, and the circumvention prohibition of 40 CFR 61.19 as it may relate thereto, as adopted in 15A NCAC 2D .0525(a)(1), which civil penalties may be assessed by the Commission or by the Director, Division of Epidemiology.

Statutory Authority G.S. 87-94; 143-215.3 (a) (4); 143-215.6 (a); 143-215.17 (b); 143-215.36 (b); 143-215.91 (a); 143-215.114 (a).

Notice is hereby given in accordance with G.S. 150B-12 that the EHNR - Environmental Management Commission intends to amend rule(s) cited as 15A NCAC 2D .1002, .1004, and .1005.

The proposed effective date of this action is April 1, 1991.

The public hearing will be conducted at 2:00 p.m. on August 17, 1990 at Ground Floor Hearing Room, Archdale Building, 512 North Salisbury St., Raleigh, NC.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths if many people want to speak. The record of proceedings will remain open for 30 days following the hearing to receive additional written statements. To be included, the statement must be received by the Department within 30 days after the hearing date.

Additional information concerning the hearing or the proposals may be obtained by contacting:

*Mr. Thomas C. Allen
Division of Environmental Management
P. O. Box 27687
Raleigh, North Carolina 27611-7687
(919) 733-3340*

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

**SUBCHAPTER 2D - AIR POLLUTION
CONTROL REQUIREMENTS**

**SECTION .1000 - MOTOR VEHICLE EMISSION
CONTROL STANDARD**

.1002 APPLICABILITY

Except for motorcycles and motor vehicles which are older than 12 model years, excluding the current model year, all gasoline-powered motor vehicles which are required to be registered by the Division of Motor Vehicle and which are based in Mecklenburg County and Wake County are subject to the regulations of this Section.

(a) This Section is applicable to all 1975 and later gasoline-powered motor vehicles, except motorcycles and excluding the current model year, that are required to be registered by the North Carolina Division of Motor Vehicles in the counties listed in Paragraph (b) of this Rule.

(b) The emission standards will become effective in the following counties on the dates indicated:

<u>County</u>	<u>Effective Date</u>
<u>Mecklenburg</u>	<u>April 1, 1991</u>
<u>Wake</u>	<u>April 1, 1991</u>
<u>Forsyth</u>	<u>July 1, 1991</u>
<u>Guilford</u>	<u>July 1, 1991</u>

Statutory Authority G.S. 20-128.2 (a); 143-215.3 (a) (1); 143-215.107 (a) (3); 143-215.107 (a) (6); 143-215.107 (a) (7).

.1004 EMISSION STANDARDS

(a) The following standards specify the maximum carbon monoxide (CO) and hydrocarbon (HC) concentrations permitted to be exhausted from motor vehicles subject to these Regulations:

<u>Vehicle Class</u>	<u>Model Year</u> <u>Carbon Monoxide</u> <u>Standard</u> <u>At Idle (Percent)</u>
<u>Light-duty Vehicle</u>	<u>1974 6.5</u> <u>1975-1977 4.5</u> <u>1978 4.0</u> <u>1979 2.5</u> <u>1980 2.0</u> <u>1981 and later 1.2</u>
<u>Heavy-duty Vehicle</u>	<u>1974 6.5</u>

Vehicle Class

Light-duty Vehicle

Model Year

1975-1977
1978-1979
1980
1981 and later

Heavy-duty Vehicle

1975-1978
1979 and later

CO Standard
At Idle (Percent)

4.5
3.5
2.0
1.2

HC Standard
At Idle (PPM)

450
350
250
220

5.0
4.0

500
400

(b) Exceptions or variances to the standards of subdivision in Paragraph (a) of this Regulation, other than those specified in Regulation .1002 of this Section, are permitted only in accordance with the provisions of the Emissions Test procedures Section of the "Safety, Emissions, Windshield Procedures Manual" as set forth by the North Carolina Division of Motor Vehicles.

Statutory Authority G.S. 20-128.2 (a); 143-215.3 (a) (1); 143-215.107 (a) (3); 143-215.107 (a) (6); 143-215.107 (a) (7).

.1005 MEASUREMENT AND ENFORCEMENT

The methods and equipment for measuring the carbon monoxide exhaust emissions are specified in the "Safety, Emissions, Windshield Procedures Manual" Appendix G of the North Carolina State Implementation Plan for Air Quality as set forth by the North Carolina Division of Motor Vehicles, Environmental Management. The methods for enforcing the standards of this Section are contained in the "Safety, Emissions, Windshield Procedures Manual" as set forth by the North Carolina Division of Motor Vehicles. The documents adopted by reference in this Section shall automatically include any later amendments thereto as allowed by G.S. 150B-14(c).

Statutory Authority G.S. 20-128.2 (a); 143-215.3 (a) (1); 143-215.107 (a) (3); 143-215.107 (a) (6); 143-215.107 (a) (7); 150B-14(c).

Notice is hereby given in accordance with G.S. 150B-12 that the EHNR (Wastewater Treatment Plant Operators Certification Commission) intends to amend rule(s) cited as 15A NCAC 8A .0101 - .0102, .0202; 5B .0108 - .0109, .0201 - .0205, .0302 - .0303, .0404 - .0405; 5C .0002, .0004; 5D .0004 - .0006.

A fiscal note has been issued and a copy is available from the agency.

The proposed effective date of this action is December 1, 1990.

The public hearing will be conducted at 1:00 p.m. on August 27, 1990 at Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC 27611.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information please contact Dennis Ramsey, Division of Environmental Management, P.O. Box 27657, Raleigh, NC 27611. (919) 733-5053.

CHAPTER 8 - WTP OPERATORS CERTIFICATION COMMISSION

SUBCHAPTER 8A - AUTHORITY; ORGANIZATION; STRUCTURE; DEFINITIONS AND HEARING PROCEDURES

SECTION .0100 - DEFINITIONS AND ORGANIZATION

.0101 DEFINITIONS

(a) "Certification Commission" is the Wastewater Treatment Plant Operators Certification Commission created by G.S. 143B-300.

(b) "Conditional Certificate" is a permanent certificate issued by the Certification Commission to an individual as the result of passing an examination administered by the Certification Commission and which is valid only for a specified type and grade of wastewater treatment facility. It is subject to the provisions of G.S. 90A-40a.

(c) "Contract Operation Firm" is any commercial wastewater treatment operation firm as described in G.S. 90A-45a.

(d) "Operator in Responsible Charge" is the operator designated to fulfill the requirements of G.S. 90A-44. ~~In order to qualify as operator in responsible charge of a particular wastewater treatment facility, an operator:~~

- (1) ~~must possess one of the certificates listed in G.S. 90A-40 of a grade at least equivalent to the classification of the facility; and~~
- (2) ~~must be the operator who is actually in charge of the daily operation and maintenance of the facility and who resides within 30 minutes travel time of the facility and is readily available for consultation at the facility in case of an emergency, malfunction, or breakdown of equipment or for other need; and~~
- (3) ~~may be an employee of a Contract Operation Firm so long as this employee meets all requirements in (1) and (2) in this Rule.~~

(e) "Owner" is that person, firm, or corporation described in G.S. 90A-44.

(f) "Permanent Certificate" is that certificate of competence and experience issued by the Certification Commission to an individual as the result of passing an examination administered by the Certification Commission or issued by the Certification Commission by reciprocity. It is subject to the provisions of G.S. 90A-40a.

(g) "Reciprocity Certificate" is that certification allowed under G.S. 90A-40b.

(h) "Temporary Certificate" is that certificate issued to an individual by the Certification Commission when the conditions of G.S. 90A-40e are met.

(i) "Wastewater Treatment Facility" is any facility classified under the provisions of G.S. 90A-37.

Statutory Authority: G.S. 90A-37; 90A-38; 90A-40; 90A-44; 90A-45; 143B-300; 150B-2141.

.0102 CREATION

The Wastewater Treatment Plant Operators Certification Commission, Department of ~~Natural Resources and Community Development~~, Environment, Health, and Natural Resources is located at 512 N. Salisbury Street, Archdale Building, P.O. Box 27657, Raleigh, North Carolina 27611, was created and became effective July 1, 1969.

Statutory Authority: G.S. 143B-300.

SECTION .0200 - GENERAL PURPOSE: DUTIES AND REQUIREMENTS: AND PROGRAMS

.0202 DUTIES AND REQUIREMENTS

(c) Requirements for Certified Operators

(2) Owners are required to provide a certified back-up operator to fulfill the duties of the Operator in Responsible Charge (ORC) set forth in Paragraph (c)(4)(B) of this Rule when the ORC is unavailable due to illness, vacation, or job related absence and to inform the Certification Commission in writing when:

(A) an individual formerly designated as the Operator in Responsible Charge is no longer performing these duties; or

(B) a Contract Operation Firm formerly designated to be responsible for operation and maintenance is no longer performing these duties.

(3) A Contract Operation Firm is required to inform the Certification Commission in writing within 30 days when:

(A) an individual formerly designated as the Operator in Responsible Charge is no longer performing these duties; or

(B) a Contract Operation Firm formerly designated to be responsible for operation and maintenance is no longer performing these duties.

This letter shall indicate the date of the change in the status of the Operator in Responsible Charge or the Contract Operation Firm and the name of the new designee or Contract Operation Firm as required in 8A .0202(d)(2).

(4) In order to qualify as operator in responsible charge of a particular wastewater treatment facility, an operator:

(A) must possess one of the certificates listed in G.S. 90A-40 of a grade at least equivalent to the classification of the facility;

(B) must be responsible for and visit each facility at least daily, excluding weekends and holidays, properly manage and document daily operation and maintenance, certify monitoring and reporting information as prescribed in the Permit, reside within reasonable proximity of the facility, to be readily available for consultation, emergencies, regulatory agency inspections and similar matters;

(C) may be an employee of a Contract Operation Firm so long as this employee meets all requirements in Paragraphs (c)(4)(A) and (B) of this Rule;

(D) may be designated to serve as ORC for more than one classified facility provided that the total number of points as determined by the following table does not exceed 100.

Class IV	Facility	80 points
Class III	Facility	60 points
Class II	Facility	20 points
Class I	Facility	10 points

Statutory Authority G.S. 90A-37 through 90A-43; 143B-300.

SUBCHAPTER 8B - CERTIFICATION OF OPERATORS

SECTION .0100 - APPLICATION FOR EXAMINATION AND CERTIFICATION: AND NOTIFICATION OF CHANGE IN ADDRESS

.0108 ADDRESS FOR REQUESTING AND RETURNING APPLICATIONS

Applications are obtainable from and should be returned to: Chairman, Wastewater Treatment Plant Operators Certification Commission, Department of ~~Natural Resources and Community Development~~, Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611.

Statutory Authority G.S. 90A-39; 90A-42; 143B-300.

.0109 REQUIREMENT FOR NOTIFICATION OF CHANGE IN ADDRESS

Holders of certificates under this program shall notify the Chairman, Wastewater Treatment Plant Operators Certification Commission, Department of ~~Natural Resources and Community Development~~, Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611, of any change in address.

Statutory Authority G.S. 90A-35; 90A-43; 143B-300.

SECTION .0200 - EDUCATION AND EXPERIENCE FOR CERTIFIED WASTEWATER TREATMENT PLANT OPERATORS

.0201 GRADE I WASTEWATER TREATMENT PLANT OPERATOR

An applicant for a grade I certificate (lowest) shall be expected to have a general knowledge of the operation of small treatment plants. The applicant shall have knowledge of equipment usually employed in such plants, and be able to describe the general maintenance requirements for such plant units. The applicant must submit

an application showing that one of the following prerequisite combinations of training and experience has been met in order to take the grade I examination:

- (1) three years of acceptable experience in wastewater treatment plant operation;
- (2) completion of eighth grade of school and two years of acceptable experience in wastewater treatment plant operation;
- (3) ~~one~~ satisfactory completion of a Grade I approved training school for wastewater treatment plant operators and one year of acceptable experience in wastewater treatment plant operation;
- (4) graduate of a high school, or equivalent GED, and three months of acceptable experience in wastewater treatment plant operation;
- (5) graduate of a high school or equivalent GED or a two or four year college and completion of approved training school.

Provided, however, that if an applicant fails the Grade I examination after three attempts, the applicant must then satisfactorily complete a Grade I approved training school before taking the Grade I examination again.

Statutory Authority G.S. 90A-39; 143B-300.

.0202 GRADE II WASTEWATER TREATMENT PLANT OPERATOR

(a) An applicant for a grade II certificate shall be expected to have a general knowledge of the various types of wastewater treatment plants and the processes involved; a general knowledge of the composition of wastewater and the proper sampling thereof; a general knowledge of the procedure involved in making basic physical and chemical tests and their application to treatment plant control; the ability to make simple calculations; general knowledge of the proper maintenance of the various treatment plant units and the mechanical equipment involved; to keep and interpret records; practice safety and maintain good public relations; and such other information as may be deemed pertinent by the Wastewater Treatment Plant Operators Certification Commission.

(b) The applicant must submit an application showing that one of the following prerequisite combinations of training and experience has been met in order to take the grade II examination:

- (1) ~~one~~ satisfactory completion of a Grade II approved training school for wastewater treatment plant operators and two years of acceptable experience in a North Carolina class I, or equivalent, wastewater treatment plant or higher;

- (2) a North Carolina grade I certificate, or equivalent, and one year of acceptable operator experience in a North Carolina class I, or equivalent, wastewater treatment plant or higher;
- (3) graduate of high school, or equivalent GED, and six months of acceptable experience in a North Carolina class I, or equivalent, wastewater treatment plant or higher;
- (4) graduate of a recognized two-year college or technical school or college or university and six months of acceptable experience in wastewater treatment operation.

Provided, however, that if an applicant fails the Grade II examination after three attempts, the applicant must then satisfactorily complete a Grade II approved training school before taking the Grade II examination again.

Statutory Authority G.S. 90A-39; 143B-300.

.0203 GRADE III WASTEWATER TREATMENT PLANT OPERATOR

(a) An applicant for a grade III certificate shall be expected to ~~know~~ be more knowledgeable, and to have the ability to answer more highly specialized questions relative to wastewater treatment and plant operation than ~~is~~ that required for an applicant for a grade II certificate. In addition to the requirements mentioned for a grade II certificate, a candidate for a grade III certificate should have a greater knowledge of the physical, chemical and bacteriological tests ordinarily performed in an adequately equipped laboratory for the determination of the nature, type and concentration of various wastewaters. The applicant should be able to perform more advanced calculations including velocity of flow and pressures in pipes, etc., and should have a detailed knowledge of the principles of treatment plant operation, efficiencies, corrosion and its prevention, and the proper maintenance of all items of equipment in a wastewater treatment plant. The applicant should be familiar with various types of pumps commonly used in wastewater treatment plants, their advantages and disadvantages, and be able to calculate pump efficiencies. The applicant should know of the problems created by industrial wastes, their effect on the sewers, treatment plant, and receiving stream. The applicant should be able to measure, by various means, the flow of wastewaters, to properly make composite samples, and to run the necessary physical, chemical and bacteriological tests necessary to provide the required degree of treatment prior to discharge into the receiving water.

(b) The applicant must submit an application showing that the applicant possesses an active North Carolina grade II certificate or equivalent possess an active certificate at the highest grade in any other state and that one of the following prerequisite combinations of training and experience has been met in order to take the grade III examination:

- (1) four years of acceptable experience in a North Carolina class II, or equivalent, wastewater treatment plant or higher;
- (2) graduate of high school, or equivalent GED, and three years of acceptable experience in a North Carolina class II, or equivalent, wastewater treatment plant or higher;
- (3) two years of college or associate degree with academic preparation in chemistry, biology, public health, or related fields, and two years of acceptable experience in a North Carolina class II, or equivalent, wastewater treatment plant or higher;
- (4) graduate of a recognized two year college or technical school, with an associate degree in environmental sciences, and 18 months of acceptable experience in a North Carolina class II, or equivalent, wastewater treatment plant or higher;
- (5) graduate of a recognized college or university with a major in natural or physical sciences, engineering or related field, and one year of acceptable experience in a North Carolina class II or equivalent wastewater treatment plant or higher.

Provided, however, that if an applicant fails the Grade III examination after three attempts, the applicant must then satisfactorily complete a Grade III approved training school before taking the Grade III examination again.

Statutory Authority G.S. 90A-39; 143B-300.

.0204 GRADE IV WASTEWATER TREATMENT PLANT OPERATOR

(a) An applicant for a grade IV certificate (highest) shall be expected to have more specific knowledge covering the entire field of wastewater treatment than the applicant for a grade III certificate. The applicant should have more advanced knowledge of the design and construction of wastewater treatment facilities as well as more advanced knowledge of the chemistry and biology involved in the various processes of wastewater treatment. The applicant should be familiar with various industrial wastes and know how to measure flow, sample and run the common physical, chemical and bacteriological tests necessary to provide the proper pretreatment or

treatment thereof. The applicant should have a good knowledge of the proper operation and maintenance of the various units in a modern wastewater treatment plant including pumps, motors, and electrical equipment. The applicant should be familiar with new developments in the field of wastewater treatment and should have a good knowledge of the laws and regulations relating to stream sanitation. The applicant should be able to develop necessary records and prepare required reports, etc. The applicant should be able to properly supervise other employees and place into practice good public relations and safety programs, etc.

(b) The applicant must submit an application showing that the applicant possesses an active North Carolina grade III certificate or equivalent possess an active certificate at the highest grade in any other state and that one of the following prerequisite combinations of training and experience has been met in order to take the grade IV examination:

- (1) five years of acceptable experience in a North Carolina class III, or equivalent, wastewater treatment plant or higher;
- (2) graduate of high school, or equivalent GED, and four years of acceptable experience in a North Carolina class III, or equivalent wastewater treatment plant or higher;
- (3) two years of college or associate degree with academic preparation in chemistry, bacteriology, public health, or related fields and three years of acceptable experience in a North Carolina class III, or equivalent, wastewater treatment plant or higher;
- (4) graduate of a recognized two year college or technical school, with an associate degree in environmental sciences, and 30 months of acceptable experience in a North Carolina class III, or equivalent, wastewater treatment plant or higher;
- (5) graduate of a recognized college or university with a major in natural or physical sciences, engineering, or related field, and two years of acceptable experience in a North Carolina class III, or equivalent, wastewater treatment plant or higher.

Provided, however, that if an applicant fails the Grade IV examination after three attempts, the applicant must then satisfactorily complete a Grade IV approved training school before taking the Grade IV examination again.

Statutory Authority G.S. 90A-39; 143B-300.

.0205 DEFINITIONS

(a) Acceptable experience shall mean the total time spent in wastewater treatment plant operation and related fields of which at least 50 percent must be actual operating experience in a wastewater treatment plant.

(b) Satisfactory completion of an approved training school shall mean attendance of at least 80 percent of the total hours of instruction of a non-degree technical course approved by the Wastewater Treatment Plant Operators Certification Commission.

(c) Recognized two year college or technical school shall mean an accredited two year institution awarding degrees on the associate level.

(d) Recognized college or university shall mean an accredited four-year institution awarding degrees on the bachelors level.

Statutory Authority G.S. 90A-39; 143B-300.

SECTION .0300 - CERTIFICATION BY EXAMINATION

.0302 CONDUCTING AND GRADING EXAMINATIONS

(a) Examinations, prepared by members of the commission or its authorized representatives and approved by the commission, will be given only to those who, after filing proper application, have been determined to be eligible. Examinations will be conducted and graded under the supervision of a representative of the commission, or its authorized representatives. Assistance in conducting and grading the examinations may be sought from members of the division of environmental management, and other appropriate persons with the approval of the commission. Examinations will be prenumbered; therefore, examinee's paper will be identified by number rather than by name. When each examinee receives his examination paper, he will identify himself by way of his drivers license or other form of identification satisfactory to the proctor, and the identification number will be recorded on the face of the examination paper.

(b) Representatives of the Commission, or other authorized representatives, who are supervising the examinations may take appropriate action against applicants, including dismissal from the examination, in order to assure that cheating does not occur. If the applicant holds a certificate already, the Commission may revoke the certification in accordance with NCGS 90A-41 and 15A NCAC 8D .0004, for cheating on an examination.

Statutory Authority G.S. 90A-39; 93B-8; 143B-300.

.0303 EXAMINATION RESULTS AND ISSUANCE OF CERTIFICATES

(a) Within as short a period as feasible, after an examination, the examinee will be informed, in writing only, by the commission or its authorized representatives as to the results of his examination. If a passing score is made, such notification constitutes certification by the commission that the applicant is a qualified operator in the appropriate grade. After each examination, a list of those certified shall be drawn up and made a part of the permanent records of the commission. Copies of these lists will be provided each commission member. Upon completion of the lettering, the qualifying applicant will be issued a certificate designating his level of competency.

(b) Under normal circumstances, neither the examination grade nor the examination paper of any applicant will be made available to anyone other than the members of the commission and those approved persons who assist in conducting and grading the examinations. The examination papers will be held for a period of six months following notification to the examinee. Questions by the applicant concerning the examination must be made in writing to the commission within that period. An applicant who fails to pass an examination shall be entitled to and notified of the privilege to review his examination in the presence of one or more commission members or its authorized representative in the Raleigh office, or upon request, at a regional office of the Department of Natural Resources and Community Development, Environment, Health, and Natural Resources or other appropriate place.

(c) In order to assure active certification, an annual renewal fee will be required as specified in G.S. 90A-42.

Statutory Authority G.S. 90A-39; 90A-40; 90A-42; 93B-3; 93B-8; 143B-300.

SECTION .0400 - CERTIFICATION WITHOUT EXAMINATION

.0404 TEMPORARY CERTIFICATION

(d) Temporary certificates are valid for one year from the date of issuance at the place of employment for which they are issued.

(e) A temporary certificate may only be requested for "temporary" situations and will be limited to the original one year of issuance plus one year additional renewal period for one individual. A temporary certificate or certificates will be valid at any individual wastewater treatment plant for no more than three consecutive contin-

uous years from the original date of issuance unless extreme extenuating circumstances are shown.

Statutory Authority G.S. 90A-40(e); 143B-300.

.0405 TEMPORARY CERTIFICATION RENEWAL

(a) Temporary certification renewal must be requested 60 days prior to the expiration date of a temporary certificate. The request must be made by application and accompanied by appropriate fee and a letter or statement prepared by the owner setting forth attempts made by the operator to become permanently certified by examination during the temporary certification period and a documentation of the efforts by the owner to secure a permanently certified operator, and any other information requested by the commission relative to the owner's inability to retain a permanently certified operator.

(b) ~~No temporary certification renewal shall be issued if the operator lacks the capacity to become eligible for examination for permanent certification at the required grade within one year of renewal application date. The Temporary Certification Renewal shall be valid for one year from the date of expiration of the initial Temporary Certificate.~~

(c) The renewal request will be considered for approval by the certification commission and upon approval, a certificate will be issued with the understanding that the commission will not issue a second temporary certificate renewal to the same individual.

Statutory Authority G.S. 90A-40(e); 143B-300.

SUBCHAPTER 8C - CLASSIFICATION OF WASTEWATER TREATMENT FACILITIES

.0002 RATING SCALE FOR CLASSIFICATION OF FACILITIES

(a) In-plant processes and related control equipment which are an integral part of industrial production shall not be considered waste treatment for the purpose of this Section. Likewise, discharges of wastewater from residences having a design flow of 1,000 gpd or less, shall not be subject to the provisions of this Section.

(b) The following scale is used for rating wastewater treatment facilities:

ITEM	POINTS
(1) <u>Industrial Pretreatment Units and or Industrial Pretreatment Program</u> see definition No. 33) No. 34)	2 4
(2) DESIGN FLOW OF PLANT IN gpd	

[not applicable to non-contaminated cooling waters, ~~and non-discharging systems~~) sludge handling facilities for water purification plants, totally closed cycle systems (def. No. 11), and facilities consisting only of Subparagraph (4)(D) or Subparagraphs (4)(D) and (11)(D)]

0 --	20,000	1
20,001 --	50,000	2
50,001 --	100,000	3
100,001 --	250,000	4
250,001 --	500,000	5
500,001 --	1,000,000	8
1,000,001 --	2,000,000	10
2,000,001 (and up) --	rate 1 point additional for each 200,000 gpd capacity up to a maximum of:.....	30

Design Flow (gpd):

(3) PRELIMINARY UNITS (see definition ~~no. 35)~~ No. 32)

(a) Influent Pumps (including air lift)..... 3

(A) ~~(b)~~ Bar Screens 1
or

(B) ~~(c)~~ Mechanical Screens, Static Screens or Comminuting Devices 2

(C) ~~(d)~~ Grit Removal 1
or

(D) ~~(e)~~ Mechanical or Aerated Grit Removal..... 2

(E) ~~(f)~~ Flow Measuring Device..... 1
or

(F) ~~(g)~~ Instrumented Flow Measurement 2

(G) ~~(h)~~ Preaeration or Equalization + 5

(II) Influent Flow Equalization 2

(I) ~~(i)~~ Grease or Oil Separators --

Gravity 2

Mechanical..... 3

~~Aerated~~..... 5

Dissolved Air

Flotation 8

(J) Chemical Conditioning..... 5

(J) Prechlorination..... 5

(4) PRIMARY TREATMENT UNITS

(A) Septic Tank (see definition ~~no. 44)~~ No. 43)..... 2

(B) Imhoff Tank..... 3 5

(C) Primary Clarifiers (including sludge air lifts)..... 5

(D) Settling Ponds or Settling Tanks for Inorganic Non-toxic Materials Involving a Discharge to the Surface Waters (sludge handling facilities for water purification plants, sand, gravel, stone, and other

mining operations except recreational activities such as gem or gold mining).....	40 2
(5) SECONDARY TREATMENT UNITS	
(A) Carbonaceous Stage	
(i) Aeration - High Purity Oxygen System.....	20
Diffused Air System.....	10
Mechanical Air System (fixed, floating or rotor).....	8
Separate Sludge Reaeration.....	3
(ii) Trickle Filter - High Rate..	7
Standard Rate	5
Packed Tower.....	5
(iii) <u>Biological Aerated Filter or Aerated Biological Filter</u>	10
(iv) (iii) Aerated Lagoons.....	10
(v) (iv) Rotating Biological Contractors (biolisc) <u>Contractors</u>	10
(vi) (v) Sand Filters - intermittent	
biological.....	2
recirculating biological.....	3
(vii) (vi) Stabilization Lagoons.....	5
(viii) (vii) Clarifier (including sludge air lifts)	5
(ix) <u>Single stage system for combined carbonaceous removal of BOD and nitrogenous removal by nitrification (See def. No. 12) [Points for this Paragraph have to be in addition to Sub-paragraphs (5)(A)(i) through (5)(A)(viii)]</u>	8
(x) <u>Nutrient additions to enhance BOD removal</u>	5
(xi) <u>Biological Culture ("Super Bugs") addition to enhance organic compound removal</u>	5
(B) Nitrogenous Stage	
(i) Aeration - High Purity Oxygen System.....	20
Diffused Air System.....	10
Mechanical Air System (fixed, floating, or rotor).....	8
Separate Sludge Reaeration.....	3
(ii) Trickle Filter - High Rate	7
Standard Rate	5
Packed Tower.....	5
(iii) <u>Biological Aerated Filter or Aerated Biological Filter</u>	10
(iv) (iii) Rotating Biological Contractors (biolisc) <u>Contractors</u>	10
(v) (iv) Sand Filter - intermittent	
biological.....	2

recirculating biological.....	3
(vi) (v) Clarifier (including sludge air lifts)	5
(6) TERTIARY OR ADVANCED TREATMENT UNITS	
(A) Activated Carbon Beds -	
without carbon regeneration.....	5
with carbon regeneration.....	15
(B) Powdered or Granular Activated Carbon Feed -	
without carbon regeneration.....	5
with carbon regeneration.....	15
(C) <u>Ammonia Air Stripping</u>	48 5
(D) <u>Chemical Additions</u>	5
(D) (c) Denitrification Process (separate process)	10
(E) (d) Electrodialysis.....	5
(F) (e) Foam Separation.....	5
(G) (f) Ion Exchange.....	5
(H) (g) Land Application of Treated Effluent (see definition no. 22b <u>No. 22b</u>) [not applicable for facilities under 10(a)]	5
(not applicable for sand, gravel, stone and other similar mining operations)	
(i) <u>on agriculturally managed sites (See def. No. 4)</u>	10
(ii) <u>by high rate infiltration on non-agriculturally managed sites (includes rotary distributors and similar fixed nozzle systems)</u>	4
(iii) <u>by subsurface disposal (includes low pressure pipe systems and gravity systems except at plants consisting of septic tank and nitrification lines only)</u>	4
(I) (h) Microscreens.....	5
(J) (i) Phosphorus Removal by Biological Processes (See def. No. 26)	20
(K) (j) Polishing Ponds -	
without aeration.....	2
with aeration.....	5
(L) (k) Post Aeration - cascade	0
diffused or mechanical	5
(M) <u>Pre Package Unit for Removal of Oil and Grease</u>	30
(N) (l) Reverse Osmosis.....	5
(N) (m) Sand or Mixed-Media Filters --	
low rate	2
high rate	5
(O) <u>Treatment processes for removal of metal or cyanide</u>	15

(P) <u>Treatment processes for removal of toxic materials other than metal or cyanide</u>	15
(7) <u>SLUDGE TREATMENT</u>	
(A) <u>Sludge Digestion Tank --</u>	
Heated.....	10
Aerobic.....	5
Unheated.....	3
(B) <u>Sludge Stabilization (chemical or thermal)</u>	4 5
(C) <u>Sludge Drying Beds --</u>	
Gravity.....	2
Vacuum Assisted.....	5
(D) <u>Sludge Elutriation</u>	5
(E) <u>Sludge Conditioner (chemical or thermal)</u>	5
(F) <u>Sludge Thickener (gravity)</u>	5 2
(G) <u>Dissolved Air Flotation Unit</u> [not applicable to a unit rated as (3)(i)].....	8
(H) (g) <u>Sludge Gas Utilization (including gas storage)</u>	2
(I) (h) <u>Sludge Holding Tank -</u>	
Aerated.....	5
Non-aerated.....	2
(J) (i) <u>Sludge Incinerator (not including activated carbon regeneration)</u>	10
(K) (j) <u>Vacuum Filter, Centrifuge or Filter Press</u>	10
(8) <u>SLUDGE DISPOSAL (including incinerated ash)</u>	
(A) <u>Lagoons</u>	2
(B) <u>Land Application (surface and subsurface) (see definition 22a) 22a)</u>	10
(C) <u>Landfilled (burial)</u>	5
(9) <u>DISINFECTION</u>	
(A) <u>Pre Chlorination</u>	5 4
(b) <u>Intermediate</u>	2
(c) <u>Post</u>	3
(B) (d) <u>Dechlorination</u>	5
(C) (e) <u>Chlorine or Ozone Generation</u>	5
(D) (f) <u>Radiation</u>	3 5
(10) <u>CHEMICAL ADDITION SYSTEM(S)</u> (See definition No. 9) [not applicable to chemical additions involved in Subparagraphs (3)(J), (5)(A)(xi), (6)(A), (6)(B), (7)(B), (7)(E), (9)(A), (9)(B), or (9)(C)] 5 points each: List:.....	5 5 5 5
(11) (40) <u>MISCELLANEOUS UNITS</u>	
(a) <u>Holding Ponds or Holding Tanks for Inorganic, Non-toxic Materials with no Discharge to the Surface Waters</u> ..	2

(Sludge handling facilities for water purification plants, sand, gravel, crushed stone and other similar operations see definition no. 10).	
(A) (b) <u>Holding Ponds, or Holding Tanks or Settling Ponds for Organic or Toxic Materials with no Discharge to the Surface Waters</u>	4
(Any pump, valve, or other mechanical control subject to failure creating a potential for bypass or discharge from the holding ponds or tanks will necessitate a minimum classification of class I requiring a certified operator.) including wastes from mining operations containing nitrogen and/or phosphorus compounds in amounts significantly greater than is common for domestic wastewater.....	4
(B) (c) <u>Holding Pond for Effluent Flow Equalization and or Stage Discharge (not applicable to storage basins which are part of land application systems)</u>	2
(C) <u>Stage Discharge (not applicable to storage basins inherent in land application systems</u>	5
(D) <u>Effluent Pumps</u>	3
(e) <u>In-Plant Pumps (including air lifts)</u>	2
(E) (f) <u>Stand-By Power Supply</u>	3
(F) (g) <u>Thermal Pollution Control Device</u>	3
(h) <u>Treatment Processes for Removal of Metal or Cyanide and Other Toxic Materials</u>	30

TOTAL POINTS

CLASSIFICATION

Class I.....	5 - 25 Points
Class II.....	26 - 50 Points
Class III.....	51 - 65 Points
Class IV.....	66 - Up Points

Facilities having a rating of one through four points, inclusive, do not require a certified operator. Classification of all other facilities requires a comparable grade operator in responsible charge.

Facilities having an activated sludge process will be assigned a minimum classification of Class II. Facilities having treatment processes for the removal of metal or cyanide will be assigned a minimum classification of Class II.

Facilities having treatment processes for the biological removal of phosphorus will be assigned a minimum classification of Class III.

Statutory Authority G.S. 90A-37.

0004 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) Activated Carbon Beds. A physical chemical method for reducing soluble organic material from wastewater effluent; The column-type beds used in this method will have a flow rate varying from two to eight gallons per minute per square foot and may be either upflow or downflow carbon beds. Carbon may or may not be regenerated on the wastewater treatment plant site;
- (2) Aerated Lagoons. A basin in which all solids are maintained in suspension and by which biological oxidation of organic matter is reduced through artificially accelerated transfer of oxygen on a flow-through basis;
- (3) Aeration. A process of bringing about intimate contact between air or high purity oxygen and a liquid by spraying, agitation or diffusion;
- (4) Agriculturally managed site. Any site on which a crop is produced, managed, and harvested (Crop includes grasses, grains, trees, etc);
- (5) Ammonia Air Stripping. A process by which the ammonium ion is first converted to dissolved ammonia (pH adjustment) with the ammonia then released to the atmosphere by physical means; or other processes which remove petroleum products such as benzene, toluene, and xylene;
- (6) Carbon Regeneration. The regeneration of exhausted carbon by the use of a furnace to provide extremely high temperature which volatilize and oxidize the absorbed impurities;
- (7) Carbonaceous Combined Carbon and Nitrogen Stage. A stage(s) stage of wastewater treatment designed to achieve "secondary" effluent limits; or a single stage treatment plant that can achieve advanced effluent limits within the same biological reactor;
- (8) Centrifuge. A mechanical device in which centrifugal force is used to separate solids from liquids and or to separate liquids of different densities;
- (9) Chemical Additions. Addition Systems - The addition of chemical(s) to wastewater at an application point for purposes of improving solids removal, pH adjustment, alkalinity control, etc.; the capability to experiment with different chemicals and different application points to achieve a specific result will be considered one system; the capability to add chemical(s) to dual units will be considered one system; capability to add a chemical at different application points for different purposes will result in at least two systems being rated;
- (10) Chemical Sludge Conditioning. The addition of a chemical compound such as lime, ferric chloride, or a polymer to wet sludge to coalesce the mass prior to its application to a dewatering device;
- (11) Closed Cycle Systems. Use of holding ponds or holding tanks for containment of wastewater containing inorganic, non-toxic materials from sludge handling facilities for water purification plants; wastewater from sand, gravel, crushed stone or other similar operations, from which there is no discharge to the surface waters; Such systems shall carry a maximum of two points regardless of pumping facilities or any other appurtenances;
- (12) Combined Removal of Carbonaceous BOD and Nitrogenous Removal by Nitrification - A single stage system "designed" to achieve "advanced" permit effluent limits on BOD and ammonia nitrogen within the same biological reactor;
- (13) De-chlorination. The partial or complete reduction of residual chlorine in a liquid by any chemical or physical process;
- (14) Denitrification Process. The conversion of nitrate-nitrogen to nitrogen gas;
- (15) Effluent Pumps. Pumps used for lifting treated wastewater from the plant to a discharge point;
- (16) Electrodialysis. Process for removing ionized salts from water through the use of ion-selective ion-exchange membranes;
- (17) Filter Press. A process operated mechanically for partially dewatering sludge;
- (18) Foam Separation. The planned frothing of wastewater or wastewater effluent as a means of removing excessive amounts of detergent materials through the introduction of air in the form of fine bubbles; also called foam fractionation;
- (19) Grit Removal. The process of removing grit and other heavy mineral matter from wastewater;
- (20) Imhoff Tank. A deep two story wastewater tank consisting of an upper sedimentation chamber and a lower sludge digestion chamber;
- (21) Influent Pumps. Pumps which are located in a treatment plant before primary treatment;

- (20) ~~In-plant Pumps.~~ Pumps essentially located within the treatment plant to provide continuous multi-stage treatment, including sludge pumps and recirculation pumps;
- (20) (24) Instrumented Flow Measurement. A device which indicates and/or records rate of flow;
- (21) (22) Ion Exchange. A chemical process in which ions from two different molecules are exchanged;
- (22) (23) Land application:
- (a) Sludge Disposal. A final sludge disposal method by which wet sludge may be applied to land either by spraying on the surface or by subsurface injection (i.e., chisel plow); ~~not applicable for types of sludge described in (40) (11) of this Rule@;~~
- (b) ~~Wastewater.~~ Treated Effluent. The process of spraying treated wastewater onto a land area or other methods of application of wastewater onto a land area as a means of final disposal and or treatment;
- (23) (24) Microscreen. A low speed, continuously back-washed, rotating drum filter operating under gravity conditions as a polishing method for removing suspended solids from effluent;
- (24) (25) Nitrification Process. The biochemical conversion of unoxidized nitrogen (ammonia and organic nitrogen) to oxidize oxidized nitrogen (usually nitrate);
- (25) (26) Nitrogenous Stage. A separate stage of wastewater treatment designed for the specific purpose of converting ammonia nitrogen to nitrate nitrogen;
- (26) (27) Phosphate Removal, Biological. The removal of ~~phosphate phosphorus~~ phosphorus from wastewater by ~~chemical precipitation or other means; an oxic/anoxic process designed to enhance luxury uptake of phosphorus by the microorganisms;~~
- (27) (28) Polishing Pond. A holding pond following secondary treatment with sufficient detention time to allow settling of finely suspended solids;
- (28) (29) Post Aeration. Aeration following conventional secondary treatment units to increase effluent D.O. or for any other purpose;
- (29) (30) Post Aeration. (Cascade) A polishing method by which dissolved oxygen is added to the effluent by a nonmechanical, gravity means of flowing down a series of steps or weirs; The flow occurring across the steps or weirs moves in a fairly thin layer and the operation of the cascade requires no operator adjustment; thus, zero points are assigned even though this is an essential step to meeting the limits of the discharge permit;
- (30) (31) Powdered or Granular Activated Carbon Feed. A biophysical carbon process that utilizes biological activity and organic absorption by using powdered or granular activated carbon; Virgin and/or regenerated carbon is feed controlled into the system;
- (31) (32) Preaeration. or Equalization. A tank ~~so~~ constructed to provide aeration prior to primary treatment; ~~or equalize flow through the plant;~~
- (33) Pre-packaged Unit for Removal of Oil and Grease. A unit used for the removal of oil and grease from wastewater by ~~chemical precipitation, mechanical devices, or other means of separation;~~
- (32) (35) Preliminary Units. Unit operations in the treatment process, ~~unit operations,~~ such as screening and comminution, that prepare the liquor for subsequent major operations;
- (33) (34) Industrial Pre-treatment:
- (a) Pre-treatment Unit, Industrial. The conditioning of a waste at its source before discharge, to remove or to neutralize substances injurious to sewers and treatment processes or to effect a partial reduction in load on the treatment process operated by a governing body whose wastewater treatment plant is rated; pursuant to these Rules;
- (b) Pre-treatment Program, Industrial - must be a state or EPA required program to receive points on the rating sheet;
- (34) (36) Primary Clarifiers. The first settling tanks through which wastewater is passed in a treatment works for the purpose of removing settleable and suspended solids and BOD which is associated with the solids;
- (35) Pumps. All influent, effluent and in-plant pumps;
- (36) (37) Radiation. Disinfection and or sterilization process utilizing devices emitting ultraviolet or gamma rays;
- (37) (38) Reverse Osmosis. A treatment process in which a heavy contaminated liquid is pressurized through a membrane forming nearly pure liquid free from suspended solids;
- (38) (39) Rotating Biological Contractors. A fixed biological growth process in which wastewater flows through tanks in which a series of partially submerged circular surfaces are rotated;
- (39) (40) Sand Filters:
- (a) Intermittent Biological. Filtration of effluent following septic tanks, lagoons, or some other treatment process in which

- further biodecomposition is expected to produce desired effluents; Hydraulic loading rates on these filters are computed in gpd/ac and have a resulting low gpm/sf (less than one);
- (b) Recirculating biological - the same type of sand filter as defined in Subparagraph (a) with the added capability to recycle effluent back through the sand filter;
- (40) ~~(41)~~ Sand or Mixed-Media Filters. A polishing process by which effluent limits are achieved through a further reduction of suspended solids:
- (a) low rate -- gravity, hydraulically loaded filter with loading rates in the one to three ~~gmp-sf~~ gpm-sf range;
- (b) high rate -- a pressure, hydraulically loaded filter with loading rates in the five ~~gmp-sf~~ gpm-sf range; At any rate, the loading rate will exceed three ~~gmp-sf~~ gpm-sf;
- (41) ~~(42)~~ Secondary Clarifiers. A tank which follows the biological unit of a treatment plant and which has the purpose of removing sludges associated with the biological treatment units;
- (42) ~~(43)~~ Separate Sludge Reaeration. A part of the contact stabilization process where the activated sludge is transferred to a ~~stabilization tank where aeration is continued and aerated before returning it to the aeration contact basin;~~
- (43) ~~(44)~~ Septic Tank. A single-story settling tank in which settled sludge is in contact with the wastewater flowing through the tank; shall not be applicable for septic tank systems serving single family residences having capacity of 2,000 gallons or less ~~or which do not result in a discharge to surface waters; a nitrification field;~~
- (44) ~~(45)~~ Sludge Digestion. The process by which organic or volatile matter and sludge is gasified, liquefied, mineralized or converted into more stable organic matter through the activity of living organisms, which includes aerated holding tanks;
- (45) ~~(46)~~ Sludge Drying Beds. An area comprising natural or artificial layers of porous materials upon which digested sewage sludge is dried by drainage and evaporation;
- (46) ~~(47)~~ Sludge Flutration. A process of sludge conditioning in which certain constituents are removed by successive washings with fresh water or plant effluent;
- (47) ~~(48)~~ Sludge Gas Utilization. The process of using sewage gas for the purpose of heating buildings, driving engines, etc.;
- (48) ~~(50)~~ Sludge Holding Tank (Aerated and Nonaerated). A tank utilized for small wastewater treatment plants not containing a digester in which sludge may be kept fresh, and supernatant withdrawn prior to a drying method (i.e. sludge drying beds); This may be done by adding a small amount of air simply to keep the sludge fresh, but not necessarily an amount that would be required to achieve stabilization of organic matter. A nonaerated tank would simply be used to decant sludge prior to dewatering and would not allow long periods (several days of detention) without resulting odor problems;
- (49) ~~(51)~~ Sludge Incinerators. A furnace designed to burn sludge and to remove all moisture and combustible materials and reduce the sludge to a sterile ash;
- (50) ~~(52)~~ Sludge Stabilization (Chemical or Thermal). A process to make treated sludge less odorous and putrescible, and to reduce the pathogenic organism content; This may be done by pH adjustment, chlorine dosing, or by heat treatment;
- (51) ~~(53)~~ Sludge Thickener. A type of sedimentation tank in which the sludge is permitted to settle and thicken through agitation and gravity;
- (52) ~~(54)~~ Stabilization Lagoon. A type of oxidation lagoon in which biological oxidation of organic matter is effected by natural transfer of oxygen to the water from air (not a polishing pond);
- (53) ~~(55)~~ Stand-By Power Supply. On site or portable electrical generating equipment;
- (54) ~~(56)~~ Static Screens. A stationary screen designed to remove solids, including non-biodegradable particulate (floatable solids, suspended solids and BOD reduction) from municipal and industrial wastewater treatment systems;
- (55) ~~(57)~~ Tertiary Treatment. A stage of treatment following secondary which is primarily for the purpose of effluent polishing; A settling lagoon or sand or coal filter might be employed for this purpose;
- (56) ~~(58)~~ Thermal Pollution Control Device. A device providing for the transfer of heat from a fluid flowing in tubes to another fluid outside the tubes, or vice versa; or, other means of regulating liquid temperatures;
- (57) ~~(59)~~ Thermal Sludge Conditioner. ~~(Thermal)~~ A conditioning process by which heat is added for a protracted period of time to improve the dewaterability of sludge by the solubilizing and hydrating of the smaller and more highly hydrated sludge particles;

~~(58)~~ ~~(59)~~ Toxic Materials. Those wastes or combinations of wastes, including disease-causing agents which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; Toxic materials include, by way of illustration and not limitation: lead, cadmium, chromium, mercury, vanadium, arsenic, zinc, ortho-nitro-chlorobenzene (ONCB), polychlorinated biphenyls (PCBs) and dichlorodiphenyl trichloroethane (DDT); and any other materials that have or may hereafter be determined to have toxic properties;

~~(59)~~ ~~(60)~~ Trickling Filter. A biological treatment unit consisting of a material such as broken stone or rock over which wastewater is distributed; A high rate trickling filter is one which is operated at between 10 and 30 mgd per acre. A low rate trickling filter is one which is designed to operate at one to four mgd per acre;

~~(60)~~ ~~(61)~~ Trickling Filter (Packed Tower). A plug flow type of operation in which wastewater flows down through successive layers of media or filtrate material; Organic material is removed continually by the active biological fixed growth in each successive layer. This method may produce "secondary" quality effluent, or may be adapted to produce a nitrified effluent;

~~(61)~~ ~~(62)~~ Vacuum Filters, Centrifuges, or Filter Presses. Devices which are designed to remove excess water from either digested or undigested sludge prior to disposal or further treatment.

Statutory Authority G.S. 90A-37.

SUBCHAPTER 8D - POWERS AND ENFORCEMENT

.0004 REVOCATION OR RELINQUISHMENT OF CERTIFICATION

(a) The certification commission may revoke the certification of an operator in accordance with the provisions of NCGS 90A-41. Prior to the commission taking action on a proposed revocation, the operator shall be given an opportunity to submit a written statement and present an oral argument before the commission at a

regularly scheduled meeting. Notice of the meeting shall be delivered personally or by certified mail at least 15 days prior to the meeting.

(b) Notice of revocation shall be delivered to the operator personally or by certified mail at least 20 days prior to the effective date of revocation. The notice shall contain the alleged facts or conduct upon which the revocation is based and shall inform the operator of the opportunity to contest the action. The procedures to be followed shall be as specified in 15A NCAC 8A .0302.

(c) Certification may be relinquished by submission to the Certification Commission of the original certificate and a notarized statement of relinquishment.

Statutory Authority G.S. 90A-41; 143B-300; 150B-3; 150B-23; 150B-38; 150B-52.

.0005 NOTIFICATION TO ENVIRONMENTAL MANAGEMENT COMMISSION

The commission shall notify the Environmental Management Commission of the failure of an owner of a wastewater treatment facility to provide a certified operator or of the revocation or relinquishment of the certificate of any operator.

Statutory Authority G.S. 90A-35; 90A-43; 143B-300.

.0006 RECERTIFICATION FOLLOWING REVOCATION OR RELINQUISHMENT

(a) After revocation or relinquishment has been effective for a period of not less than 270 days, a person may apply in writing for recertification by the commission, including in his petition any relevant facts concerning changes to conditions under which revocation or relinquishment occurred. Such facts should show clearly that applicant will comply with the laws and regulations.

(b) Within 120 days following receipt of an application for recertification, the commission will notify the applicant by letter of its decision to deny or grant examination eligibility in accordance with procedures set out at subsection 8B .0102 herein. Additional eligibility requirements including a show cause conference may be imposed by the commission as it deems appropriate. Eligibility will only be granted if there is substantial evidence that the conditions leading to the revocation or relinquishment have been corrected.

(c) Recertification of a person as a wastewater treatment plant operator shall only occur by means of application and examination. The examinations will not be waived. The applicant shall meet the eligibility requirements set forth in

Section 8B .0200 beginning with 8B .0201 except that applicant shall not be eligible for 8B .0206. Operational experience prior to revocation or relinquishment will not apply as eligibility for future recertification. Applicant shall not be eligible for temporary certification under Section 8B .0404.

(d) Upon notification of the commission's decision to deny eligibility, the applicant may appeal the decision pursuant to the procedures contained in Article 3A of Chapter 150B of the General Statutes.

Statutory Authority G.S. 90A-39; 150B-3; 150B-38.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10D .0002 and .0003.

The proposed effective date of this action is November 1, 1990.

The public hearing will be conducted at 7:30 a.m. on September 11, 1990 at Davidson County Courthouse, Lexington, NC 27292.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from August 27, 1990 through September 26, 1990. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, North Carolina 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0002 GENERAL REGULATIONS REGARDING USE

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;

- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on that portion of the Butner-Falls of Neuse Game Lands marked as the Penny Bend Rabbit Research area;
- (6) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (7) on Linwood Waterfowl Refuge in Davidson County.

On those areas of state-owned land known collectively as the Roanoke River Wetlands and including the Broadneck, Company Swamp, Conine Island, Speller-Outlaw and Urquhart tracts, controlled trapping is allowed under a permit system. For information contact the Division of Wildlife Management of the Wildlife Resources Commission.

Statutory Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.

.0003 HUNTING ON GAME LANDS

(e) Hunting Dates:

- (3) Any game may be taken on the following game lands during the open season, except that:
 - (K) Additional restrictions or modifications apply as indicated in parentheses following specific designations:
 - Alexander and Caldwell Counties--Brushy Mountains Game Land
 - Anson County--Anson Game Land
 - Ashe County--Bluff Mountain Game Lands
 - Ashe County--Cherokee Game Lands
 - Ashe and Watauga Counties--Flk Knob Game Land
 - Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey Counties--Pisgah Game Lands (Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to October 11 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.)

Beaufort, Bertie and Washington Counties--
-Bachelor Bay Game Lands
Beaufort and Pamlico Counties--Goose
Creek Game Land
Brunswick County--Green Swamp Game
Land
Burke County--South Mountains Game
Lands
Burke, McDowell and Rutherford
Counties--Dysartsville Game Lands
Caldwell County--Yadkin Game Land
Carteret, Craven and Jones Counties--
Croatan Game Lands
Chatham County--Chatham Game Land
Chatham, Durham, Orange, and Wake
Counties--New Hope Game Lands
Chatham and Wake Counties--Shearon
Harris Game Land
Cherokee, Clay, Graham, Jackson, Macon,
Swain and Transylvania Counties--
Nantahala Game Lands (It is unlawful to
take or hunt deer on Fires Creek Bear
Sanctuary. Raccoon and opossum may
be hunted only from sunset Friday until
sunrise on Saturday and from sunset until
12:00 midnight on Saturday on Fires
Creek Bear Sanctuary in Clay County and
in that part of Cherokee County north of
US 64 and NC 294, east of Persimmon
Creek and Hiwassee Lake, south of
Hiwassee Lake and west of Nottely River;
in the same part of Cherokee County dog
training is prohibited from March 1 to
October 11. It is unlawful to train dogs
or allow dogs to run unleashed on Fires
Creek Bear Sanctuary at any time, except
that dogs may be used when hunting
raccoon or opossum and for hunting
grouse and rabbits during the open sea-
sons. It is unlawful to train dogs or allow
dogs to run unleashed on any game land in
Graham County between March 1 and
October 11.)
Chowan County--Chowan Game Land
Chowan County--Chowan Swamp Game
Land
Cleveland County--Gardner-Webb Game
Land
Craven County--Neuse River Game Land
Craven County--Tuscarora Game Land
Currituck County--North River Game Land
Currituck County--Northwest River Marsh
Game Land
Dare County--Dare Game Land (No hunt-
ing on posted parts of bombing range.)
Davidson, Davie and Rowan Counties--
Alcoa Game Land
~~Davidson County--Linwood Game Land~~

Davidson, Montgomery, Randolph and
Stanly Counties--Uwharrie Game Land
Duplin and Pender Counties--Angola Bay
Game Land
Durham, Granville and Wake Counties--
Butner-Falls of Neuse Game Land (On
portions of the Butner-Falls of Neuse
Game Land designated and posted as
"safety zones" and on that part marked
as the Penny Bend Rabbit Research Area
no hunting is permitted. On portions
posted as "restricted zones" hunting is
limited to bow and arrow during the bow
and arrow season and the regular gun
season for deer.)
Franklin County--Franklin Game Lands
Gates County--Chowan Swamp Game
Land
Granville County--Granville Game Lands
Henderson, Polk and Rutherford Counties--
Green River Game Lands
Hyde County--Gull Rock Game Land
Hyde County--Pungo River Game Land
Hyde and Tyrrell Counties--New Lake
Game Land
Jones and Onslow Counties--Hofmann
Forest Game Land
Lee County--Lee Game Land
McDowell County--Hickory Nut Mountain
Game Land
Moore County--Moore Game Land
New Hanover County--Catfish Lake Game
Land
Orange County--Orange Game Land
Person County--Person Game Land
Transylvania County--Toxaway Game Land
Vance County--Vance Game Land
Wilkes County--Thurmond Chatham Game
Land
(4) Deer of either sex may be taken on the
hunt dates indicated by holders of permits
to participate in managed hunts scheduled
and conducted in accordance with this
Subparagraph on the game lands or
portions of game lands included in the
following schedule:
Friday and Saturday of the first week after
Thanksgiving Week:
Uwharrie and Alcoa southeast of NC 49
Third Saturday after Thanksgiving Day:
Carson Woods
Thurmond Chatham
Thursday and Friday of the week before
Thanksgiving Week:
Sandhills east of US 1
Sandhills west of US 1
Fourth Saturday after Thanksgiving Day:
Dysartsville in McDowell County

Hickorynut Mountain in McDowell County
 Pisgah in Avery County
 Pisgah in Burke County
 Pisgah in Caldwell County
 Pisgah in McDowell County
 Pisgah in Yancey County north of US 19-19E
 South Mountains
 Thurmond Chatham

Application forms for permits to participate in managed deer hunts on game lands, together with pertinent information and instructions, may be obtained from hunting and fishing license agents and from the Wildlife Resources Commission. Completed applications must be received by the Commission not later than the first day of October next preceding the dates of hunt. Permits are issued by random computer selection, are mailed to the permittees 30 days prior to the hunt, and are nontransferable. Each permit is accompanied by an appropriate big game tag. A hunter making a kill must tag the deer and report the kill to a wildlife cooperator agent.

- (5) Except as otherwise indicated, the following game lands or indicated portions thereof are closed to all hunting: Bertie, Halifax and Martin Counties--Roanoke River Wetlands, consisting of the state-owned Broadneck, Company Swamp, Conine Island, Speller-Outlaw and Urquhart tracts (controlled hunting is scheduled and allowed by permit only. Interested persons should contact the Division of Wildlife Management of the Wildlife Resources Commission at the Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina ~~27611~~ 27604-1188.)

Caswell County--Caswell Game Land (That portion designated and posted as a "Safety Zone")

Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)

Davidson County--Linwood Waterfowl Refuge (except deer and dove may be hunted during any open season from September 1 through October 6).

Davie--Hunting Creek Swamp Waterfowl Refuge

Gaston, Lincoln and Mecklenburg Counties--Cowan's Ford Waterfowl Refuge (except for youth either-sex deer hunts by permit only on the first and second Saturdays in October).

Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Health Services intends to amend rule(s) cited as 15A NCAC 13A .0007; 15A NCAC 19A .0102; and 15A NCAC 21D .0706.

The proposed effective date of this action is December 1, 1990.

The public hearing will be conducted at 1:00 p.m. on August 15, 1990 at Archives and History Auditorium, State Library Building, 109 East Jones Street, Raleigh, North Carolina.

Comment Procedures: Any person may request copies of the proposed rules by contacting John P. Barkley, DEHNR, P. O. Box 27687, Raleigh, NC 27611-7687, (919) 733-7247. Written comments on these rules may be sent to Mr. Barkley at the above address or submitted at the public hearing. If you desire to speak at the public hearing, notify Mr. Barkley at least 3 days prior to the public hearing. At the discretion of the Chairman, the public may also be allowed to comment on the rules at the Commission Meeting. Fiscal notes on applicable rules are available from Mr. Barkley.

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

.0007 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

(a) ~~The general provisions contained in 40 CFR 261.1 to 261.68 (Subpart A) have been adopted by reference in accordance with G.S. 150B-14(c).~~

Statutory Authority G.S. 130A-294(c).

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - ACUTE COMMUNICABLE DISEASE CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASE CONTROL

.0102 METHOD OF REPORTING

(a) When a report of a disease or condition is required to be made pursuant to G.S. 130A-135

through 139 and ~~40 NCAC 7A .0106, 15A NCAC 19A .0101~~, the report shall be made to the local health director as follows:

- (4) In addition to the requirements of Paragraph (1) and (2), the epidemiologic information requested on a surveillance form provided by the Division of Health Services shall be completed and submitted for the reportable diseases and conditions identified in ~~40 NCAC 7A .0106 15A NCAC 19A .0101~~ (1), (6), (17), (18), (19), (20), (21), ~~(22), (23), (24), (25), (27), (29), (31), (32), (36), (37), (40), (41), (43), (47), (48), (49), (50), (51), (52), (55), (22), (23), (24), (25), (26), (28), (29), (30), (32), (33), (34), (37), (38), (41), (42), (43), (44), (48), (49), (50), (51), (52), (53), (54), (56).~~

Statutory Authority G.S. 130A-134; 130A-135; 130A-141.

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21D - NUTRITION AND DIETARY SERVICES

SECTION .0700 - WIC PROGRAM FOOD DISTRIBUTION SYSTEM

.0706 AUTHORIZED WIC VENDORS

(b) In order to participate in the WIC program, the vendor shall:

- (16) Maintain a minimum inventory of eligible food items in the store for purchase by WIC Program participants. All such foods shall be within the manufacturer's expiration date. The following items and sizes constitute the minimum inventory of eligible food items for stores classified 1 - 4:

Food Item
Juices

Type of Inventory
Orange juice must be available in 2 types. A second flavor must be available in 1 type. The types are 12 oz. frozen and 46 oz. can, canned ~~64 oz.~~ container

Quantities Required

~~6 of each type in stock~~
10-12 oz. frozen
10-46 oz. canned

(c) By signing the WIC Vendor Agreement, the local agency agrees to the following:

- (2) Monitor the vendor's performance under this agreement in a reasonable manner to ensure compliance with the agreement, state and federal WIC Program rules, regulations and policies, and applicable law. ~~Vendors~~ A minimum of 20 percent of all authorized vendors shall be monitored at least once a year. ~~and Any vendor shall be monitored within one week of any a~~ written request by the state agency;

Statutory Authority G.S. 130A-361.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Health Services intends to amend rules cited as 15A NCAC 13B .0101; 18A .1957; 18C .0102, .1505 - .1506, .1523, .1525, .1532; adopt rules cited as 15A NCAC 13B .0901 - .0905; 18C .1533 - .1534, .2001 - .2006; and repeal rules cited as 15A NCAC 18C .1503 - .1504.

NOTE: THE PROPOSED RULES IN THIS NOTICE HAVE BEEN TRANSFERRED AND RECODIFIED FROM THE DEPARTMENT OF HUMAN RESOURCES, TITLE 10, CHAPTER 10 OF THE NORTH CAROLINA ADMINISTRATIVE CODE 10 NCAC 10. ANY QUESTIONS REGARDING THE RECODIFICATION SHOULD BE DIRECTED TO MR. BARKLEY AT THE ADDRESS BELOW.

The proposed effective date of this action is December 1, 1990.

The public hearing will be conducted at 1:00 p.m. on August 15, 1990 at Archives and History Auditorium, State Library Building, 109 East Jones Street, Raleigh, North Carolina.

Comment Procedures: Any person may request copies of the proposed rules by contacting John P. Barkley, DEHNR, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-7247. Written comments on these rules may be sent to Mr. Barkley at the above address or submitted at the public hearing. If you desire to speak at the public

hearing, notify Mr. Barkley at least 3 days prior to the public hearing. At the discretion of the Chairman, the public may also be allowed to comment on the rules at the Commission Meeting. Fiscal notes on applicable rules are available from Mr. Barkley.

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (54) "Agricultural Waste" means waste materials produced from the raising of plants and animals, including animal manures, bedding, plant stalks, hulls, leaves and vegetable matter.
- (55) "Compost" means decomposed, humus-like organic matter, free from odor produced through composting and suitable for use as a soil conditioner with varying nutrient values.
- (56) "Composting Pad" means an impermeable surface such as clay, asphalt or concrete where composting activities take place.
- (57) "Compost Facility" means a site used to compost. A facility may include materials processing and hauling equipment; structures to control drainage; and structures to collect and treat leachate; and storage areas for the incoming waste, the final products, and residual materials.
- (58) "Composting" means the controlled decomposition of organic waste by naturally occurring bacteria, yielding a stable, humus-like, sterile final product resulting in volume reduction of 40 - 75 percent.
- (59) "Curing" means the final state of composting, after the majority of the readily metabolized material has been decomposed, in which the compost material stabilizes and dries.
- (60) "Inorganic" means substances in which there are no carbon-to-carbon bonds; mineral matter.
- (61) "Organic Waste" means waste composed of materials which contain carbon-to-carbon bonds and are biodegradable. Includes paper, wood, food wastes and yard wastes.
- (62) "Pathogens" means organisms that are capable of producing infection or diseases, often found in waste materials.
- (63) "Silviculture Waste" means waste materials produced from the care and cultivation

of forest trees, including bark and woodchips.

- (64) "Stabilization" means the final decomposition and curing of compost so that it does not reheat when wetted nor give off odors.
- (65) "Windrow" means an elongated compost pile.
- (66) "Windrow Composting" means the composting of organic wastes in a series of elongated piles called windrows, which are turned periodically to aerate and mix the waste materials to speed up decomposition and reduce odors.
- (67) "In-Vessel Composting" means a process using mechanized equipment to compost wastes in an enclosed area with controlled conditions for moisture and oxygen.

Statutory Authority G.S. 130A-294.

SECTION .0900 - YARD TRASH COMPOSTING FACILITIES

.0901 PROCEDURE FOR PERMIT

(a) A separate "Yard Trash Composting" permit will not be required for a sanitary landfill facility which designates a yard trash composting area within facility boundaries. Application and operational requirements as set forth in Rules .0903 and .0904 of this Section shall be addressed in submittal for a sanitary landfill permit.

(b) The seal of a professional engineer is not required when submitting plans for a Yard Trash Composting permit. A minimum of three sets of plans will be required in each application.

Statutory Authority G.S. 130A-309.11.

.0902 APPLICABILITY FOR YARD TRASH COMPOSTING

As of January 1, 1993, disposal of yard waste in a sanitary landfill shall be prohibited; however, yard trash which has been separated may be accepted at a sanitary landfill where the facility provides and maintains a separate yard trash composting area.

- (1) Applicability. A permit is required for the construction and operation of composting facilities for yard trash which process more than 3000 cubic yards of material per year. Yard trash may be composted with agricultural waste and silvicultural waste as defined in Rule .0101 of this Section. The Section does not regulate the composting of agricultural waste and silviculture waste, unless mixed with yard trash.

- (2) Activities not requiring a permit. A permit is not required for the following composting operations:
 - (a) backyard Composting.
 - (b) farming operations where the compost produced is re-used on the owner's land and not offered to the public.
 - (c) facilities composting less than 3,000 cubic yards of material per year, meeting the following conditions:
 - (i) notification of the Solid Waste Section on an annual basis as to:
 - (A) facility location;
 - (B) name of owner and operator;
 - (C) address of owner and operator;
 - (D) phone number of owner and operator;
 - (E) type of waste received;
 - (F) amount of waste received;
 - (G) composting process to be used; and
 - (H) intended distribution of the finished product.
 - (ii) Agreement to operate in accordance with operational requirements as set forth in Rule .0904 of this Section, except for Rule .0904(7) of this Section.
 - (iii) Facility operates in accordance with all other state or local laws, ordinances, rules, regulations or orders.

Statutory Authority G.S. 130A-309.11.

.0903 APPLICATION REQUIREMENTS FOR YARD TRASH COMPOSTING FACILITIES

- (a) A permit for a yard trash composting facility is based upon a particular stream of identified waste as set forth in Rule .0902(1) of this Section and as defined in Rule .0101 of this Subchapter. Any substantial change in the population or area to be served, or in the type, quantity or source of waste shall require a new permit and operation plan.
- (b) Siting for a yard trash composting facility shall meet standards as set forth in Rule .0503 of this Section, except for Rule .0503(f)(c), (d) and (2)(d)(ii) of this Section and the following:
 - (1) 50-foot minimum buffer between property lines and compost pad or storage area;
 - (2) 500-foot minimum buffer between compost pad or storage area and residences or dwellings;
 - (3) 200-foot minimum buffer between streams and rivers and compost pad or storage area; and
 - (4) 25-foot minimum distance between compost areas and swales of berms;

- (5) compost pad and storage area shall not be allowed in designated "buffer area" for sanitary landfill;
- (6) bottom elevation of compost pad and storage areas shall be a minimum of two feet above seasonal ground water elevation.

Alternative buffers for an enclosed facility may be approved on a case by case basis.

(c) The following information shall be required for reviewing an application for a yard trash composting facility:

- (1) an aerial photograph or map on a scale of at least one inch equals 400 ft. accurately showing the area within one mile of the proposed site's boundaries with the following specifically identified:
 - (A) entire property owned or leased by the person proposing the facility;
 - (B) land use and zoning;
 - (C) location of all homes, industrial buildings, public or private utilities, and roads;
 - (D) location of wells, watercourses, dry runs, and other applicable details regarding the general topography.
- (2) A site plan on a scale of at least one inch equals 200 feet showing proposed areas for:
 - (A) receiving;
 - (B) processing/staging;
 - (C) production;
 - (D) curing and storage;
 - (E) fencing;
 - (F) description of drainage characteristics identifying both site run-on and run-off, ditches, and run-off controls;
 - (G) access road;
 - (H) existing proposed contours.
- (3) A written report that contains the following:
 - (A) anticipated type, source, and composition of waste to be received;
 - (B) provisions to maintain a clean and orderly operation:
 - (i) effective barrier to prevent unauthorized entry and dumping;
 - (ii) all weather access road;
 - (iii) signs posted with name of owner, operator, contact person and number in case of emergency and hours of operation;
 - (iv) dust control measures;
 - (v) litter control measures;
 - (vi) fire protection and control measures; and
 - (vii) odor control measures and practices;
 - (C) designed capacity of the facility;

- (D) composting time duration, time from initiation of the composting process to completion and distribution;
- (E) for windrow systems, the windrow construction, including width, length, and height;
- (F) method of aeration, including turning frequency or mechanical aeration equipment and aeration capacity;
- (G) for in-vessel composting systems, a process flow diagram of the entire process, including all major equipment and flow streams;
- (H) personnel required and their responsibilities;
- (I) a description and an identification of the surface for the proposed site, area, and depth to seasonal high ground water;
- (J) a description of the composting pad;
- (K) a description of any monitoring that will occur involving the composting process or the site;
- (L) sources of waste input.
- (4) An operational plan which contains the following:
 - (A) explanation of daily operation and maintenance;
 - (B) proposed equipment;
 - (C) person responsible for operation;
 - (D) control and inspection of incoming waste;
 - (E) method for measuring incoming waste or access to scales;
 - (F) vehicle control and unloading;
 - (G) method and sequence of processing the waste;
 - (H) leachate and run-off control measures;
 - (I) description of ultimate use for finished compost;
 - (J) plan for back-up system if poor quality product produced or change in market conditions develop.
- (c) facility shall be operated in a manner to control vectors;
- (d) facility shall not mix incoming waste with finished compost to prevent re-introduction of pathogens;
- (e) more than 75 percent of the compost stored at the facility shall be used or sold for use within each year beginning the second year after the facility start-up;
- (f) the amount of compost stored at the facility shall not exceed the designed storage capacity;
- (g) yard trash, agricultural wastes or silviculture waste which shall not be made into compost shall be removed monthly;
- (h) only yard trash and agricultural waste or silviculture waste may be accepted at the facility;
- (i) if solid waste other than yard trash, agricultural waste or silviculture waste is left at the facility, it shall be separated and stored in a manner that prevents vector problems and shall be removed within seven days;
- (j) particle size of larger trash items such as limbs, trees, and stumps shall be reduced to promote composting;
- (k) yard trash must be removed from containers, unless the containers or bags or another material that has been approved by the section as biodegradable;
- (l) compost must be aerated to maintain elevated temperatures and produce a pathogen free, sterile compost product;
- (m) methods of composting, approved by the Division, which result in aerobic biochemical degradation of the organic material received shall be followed;
- (n) windrow construction and turning frequency shall be sufficient to maintain aerobic conditions to produce a compost product in the desired time frame;
- (o) the waste contains no domestic sewage, sewage sludge, septage, or municipal solid waste;
- (p) compost shall receive final aeration upon completion of composting cycle to ensure stability before distribution;
- (q) all areas for composting and storage of material shall be on an impervious base;
- (r) odors shall be controlled and minimized;
- (s) the final material shall be turned at least once during a 12-month interval;
- (t) the resulting compost shall not reheat upon standing to greater than 20 degrees C above the ambient temperature shall have a moisture content between 35 and 60 percent. Three days after the pile has

Statutory Authority G.S. 130A-309.11.

.0904 OPERATIONAL REQUIREMENTS FOR YARD TRASH COMPOSTING FACILITIES

Any person who maintains or operates a yard trash composting facility shall maintain and operate the site in accordance with the following practices, unless otherwise specified in the permit.

- (1) Plan and Permit Requirements:
 - (a) construction plans and conditions of permit shall be followed;
 - (b) a copy of the permit, engineering plans, and operational reports shall be kept on site at all times;

- (q) all areas for composting and storage of material shall be on an impervious base;
- (r) odors shall be controlled and minimized;
- (s) the final material shall be turned at least once during a 12-month interval;
- (t) the resulting compost shall not reheat upon standing to greater than 20 degrees C above the ambient temperature shall have a moisture content between 35 and 60 percent. Three days after the pile has

been formed, the interior temperature of the pile shall be measured two feet from the outside surface.

(2) **Drainage Control Requirements:**

- (a) surface water shall be diverted from the operational area;
- (b) windrows shall be constructed horizontal to slopes;
- (c) the site shall not impound water.

(3) **Water Protection Requirements.** Leachate shall be recirculated on piles to maintain moisture, contained on site or properly treated prior to discharge. An NPDES permit may be required prior to discharge of leachate to surface waters.

(4) **Access and Security Requirements:**

- (a) the site shall be secured by means of gates, chains, berms, fences, or other security measures approved by the Division, to prevent unauthorized entry;
- (b) an attendant shall be on duty at the site at all times while it is open to the public to ensure compliance with operational requirements;
- (c) the access road to the site shall be of all-weather construction and maintained in good condition.

(5) **Sign Requirements:**

- (a) signs shall provide information on owner, operator, contact person and number in case of emergency, and the hours during which the site is open for public use;
- (b) traffic signs or markers shall be provided as necessary to promote an orderly traffic pattern to and from the discharge area and to maintain efficient operating conditions;
- (c) signs shall be posted stating that only yard trash can be received at the site.

(6) **Safety Requirements:**

- (a) open burning of solid waste shall be prohibited;
- (b) equipment shall be provided to control accidental fires or arrangements shall be made with the local fire protection agency to immediately provide fire-fighting services when needed;
- (c) space shall be provided between piles to allow access for vehicles, including fire equipment.

(7) **Monitoring and Reporting Requirements:**

- (a) Monitoring (including groundwater, surface water, air, waste components, soil, or plant tissue analyses) may be required based on a case by case evaluation to insure protection of the environment.
- (b) An annual report must be submitted which includes the following information:

- (i) sources, type, quantity (by weight or volume) of waste received at the facility;
- (ii) the turning frequency (if applicable) and the timing and amount of water addition;
- (iii) sampling of temperature duration and changes during composting;
- (iv) the quantity, by weight or volume, of compost produced;
- (v) the quantity, by weight or volume, of compost removed from the facility;
- (vi) a description of the end product and distribution or disposal.

(c) The annual report shall contain a composite sample of the compost produced and shall be analyzed at intervals of every 20,000 tons of compost produced or every three months, whichever comes first, for the following parameters and units using the methods listed which are adopted by reference in accordance with G.S. 150B-14(c):

Parameter	Unit	Method
Moisture	%	EPA 160.3
Total Nitrogen	% dry weight	EPA 351 and 353
Total Phosphorus	% dry weight	EPA 365
Total Potassium	% dry weight	EPA 3050/7610
Reduction in Organic Matter	%	EPA 160.4
Organic Matter	%	EPA 160.4
pH	standard units	EPA 9045

The reduction of organic matter shall be determined by comparing the organic matter content of the feedstock into the composting process and the organic matter content of the compost product by measuring the volatile solids content using EPA method 160.4. The amount of reduction shall be determined as a percent of the original amount contained in the feedstock using the following calculation:

$$\%ROM = \frac{1 - (OMK - M) + OM(100 - OMK)}{100}$$

where: %ROM = reduction of organic matter, OM = % organic matter content of dry matter before decomposition, and OMK = % organic matter content of dry matter after decomposition.

Statutory Authority G.S. 130A-309.11.

.0905 COMPOST CLASSIFICATION AND DISTRIBUTION

Compost made from yard trash or yard trash and agricultural waste or yard trash and silviculture waste which contains no pathogenic organism, is odor free, innocuous, and contains no sharp particles which would cause injury to persons handling the compost, shall have unrestricted distribution if directions are provided with the compost product. The directions shall address maturity, moisture holding capacity, and nutrient content.

Statutory Authority G.S. 130A-309.11.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .1900 - SEWAGE TREATMENT AND DISPOSAL SYSTEMS

.1957 DESIGN CRITERIA FOR DESIGN OF ALTERNATIVE SEWAGE SYSTEMS

(b) **FILL SYSTEM:** A fill system (including new and existing fill) is a system in which all or part of the nitrification trench(es) is installed in fill material. A fill system, including an existing fill site, may be approved where soil and site conditions prohibit the installation of a conventional or modified septic tank system if the requirements of this Paragraph are met.

(1) Fill systems may be installed on sites where at least the first 18 inches below the naturally occurring soil surface consists of soil that is suitable or provisionally suitable with respect to soil structure and clay mineralogy, and where organic soils, restrictive horizons, saprolite or rock are not encountered. Further, no soil wetness condition shall exist within the first 12 inches below the naturally occurring soil surface and a groundwater lowering system shall not be used to meet this requirement. Fill systems shall not be utilized on designated wetlands unless the proposed use is specifically approved in writing by the designating agency. The following requirements shall also be met:

(A) Nitrification trenches shall be installed with at least 24 inches separating the trench bottom and any soil horizon unsuitable as to soil structure, clay mineralogy, organic soil, rock or saprolite. However, if a low pressure pipe system is used, the minimum separation distance shall be 18 inches.

(B) Nitrification trenches shall be installed with at least 18 inches separating the trench bottom and any soil wetness condition. This separation requirement for soil wetness conditions may be met with the use of a groundwater lowering system only in Soil Groups I and II, with suitable structure and clay mineralogy. However, if a low pressure pipe system is used, the minimum separation distance shall be 12 inches.

(C) Systems shall be installed only on sites with uniform slopes less than 15 percent. Storm water diversions and subsurface interceptor drains or swales may be required upslope of the system.

(D) The long-term acceptance rate shall be based on the most hydraulically limiting soil horizon within 18 inches of the naturally occurring soil surface or to a depth one foot below the trench bottom, whichever is deeper. The lowest long-term acceptance rate for the applicable soil group shall be used for systems installed pursuant to this Rule. The long-term acceptance rate shall not exceed ~~0.8~~ 1.0 gallons per day per square foot for gravity distribution or ~~0.4~~ 0.5 gallons per day per square foot for low-pressure pipe systems.

(E) If the fill system uses low-pressure pipe distribution, all the requirements of Paragraph (a) of this Rule, except Paragraph (a)(2)(B), shall apply. Systems with a design daily flow greater than 480 gallons per day shall use low-pressure pipe distribution.

(F) Fill material shall have such soil texture to be classified as sand or loamy sand (Soil Group I) up to the top of the nitrification trenches. The final six inches of fill used to cover the system shall have a finer texture (such as Group II, III) for the establishment of a vegetative cover. Existing fill material shall have no more than ten percent by volume of fibrous organics, building rubble, or other debris and shall not have discrete layers containing greater than 35 percent of shell fragments.

(G) Where fill material is added, the fill material and the existing soil shall be mixed to a depth of six inches below the interface. Heavy vegetative cover or organic litter shall be removed before the additional fill material is incorporated.

(H) The fill system shall be constructed as an elongated berm with the long axis par-

- allel to the ground elevation contours of the slope.
- (I) The side slope of the fill shall not exceed a rise to run ratio of 1:4. However, if the first 18 inches below the naturally occurring soil surface is Group I soil, the side slope of the fill shall not exceed a rise to run ratio of 1:3.
- (J) The outside edge of the nitrification trench shall be located at least five feet horizontally from the top of the side slope.
- (K) The fill system shall be shaped to shed surface water and shall be stabilized with a vegetative cover against erosion.
- (L) The setback requirements shall be measured from the projected toe of a ~~4:4 side slope~~ the slope. However, if this setback cannot be met, the setback requirements shall be measured from a point five feet from the nearest edge of the nitrification trench if the following conditions are met:
- (i) slopes shall not exceed two percent;
 - (ii) the first 18 inches of soil beneath the naturally occurring soil surface shall consist of Group I soils, and;
 - (iii) the lot or tract of land was recorded on or before January 1, 1983.
- (M) The available space requirements of Rule .1945 of this Section shall apply.
- (2) An existing fill site that does not meet the requirements of Paragraph (b)(1) of this Rule may be utilized for a sanitary sewage system if the following requirements are met:
- (A) Substantiating data are provided by the lot owner (if not readily available to the local health department) indicating that the fill material was placed on the site prior to July 1, 1977.
 - (B) The fill material placed on the site prior to July 1, 1977 shall have such soil texture to be classified as sand or loamy sand (Group I) for a depth of at least 24 inches below the existing ground surface. This fill material shall have no more than ten percent by volume of fibrous organics, building rubble, or other debris. This fill shall not have discreet layers containing greater than 35 percent of shell fragments. However, if at least 24 inches of Group I fill material was in place prior to July 1, 1977, additional fill with soil texture classified as Group I may be added to meet the separation requirements of Paragraph (b)(2)(D) of this Rule.
 - (C) Soil wetness conditions, as determined by Rule .1942(a) in this Section, are 18 inches or greater below the ground surface of the fill placed on the lot prior to July 1, 1977. This requirement shall be met without the use of a groundwater lowering system.
 - (D) Low-pressure pipe distribution shall be used and shall meet all the requirements of Paragraph (a) of this Rule, except (a)(2)(B). The long-term acceptance rate shall not exceed ~~0.4~~ 0.5 gallons per day per square foot. ~~Nitrification trenches shall be installed with at least 24 inches separating the trench bottom and~~ However, for existing fill sites with 48 inches of Group I soils, conventional nitrification trenches may be installed in lieu of low-pressure pipe systems with a maximum long-term acceptance rate of 1.0 gallons per day per square foot. The separation distance between the trench bottom and any soil wetness condition or any soil horizon unsuitable as to soil structure, clay mineralogy, organic soil, rock, or saprolite shall be 24 inches for low pressure pipe systems and 48 inches for conventional systems. This separation requirement may be met by adding additional Group I soil, but shall not be met with the use of a groundwater lowering system. Where fill is to be added, the requirements of Paragraphs (b)(1)(C), (F), (G), (H), ~~(I)~~, (J) and (K), and ~~(L)~~ the following requirements shall also be met:
 - (i) the side slope of the fill shall not exceed a side slope ratio of 1:3, and;
 - (ii) the setback requirements shall be measured from the projected toe of the slope. However, if this setback cannot be met, the setback requirements shall be measured from a point five feet from the nearest edge of the nitrification trench if the following conditions are met:
 - (I) slopes shall not exceed two percent, and;
 - (II) the lot or tract of land was recorded on or before January 1, 1983. - (E) The available space requirements of Rule .1945 of this Section shall apply.
 - (F) The design flow shall not exceed 480 gallons per day.
- (3) Other systems may be installed in fill if the requirements of Paragraph (c) of this Rule are met.

Statutory Authority G.S. 130A-335(e) and (f).

SUBCHAPTER 18C - WATER SUPPLIES

SECTION .0100 - PROTECTION OF PUBLIC WATER SUPPLIES

.0102 DEFINITIONS

As used in this Subchapter, the term:

- (1) "Act" means the North Carolina Drinking Water Act.
- (2) "Adjacent Water System" means two or more water systems that are adjacent and are owned or operated by the same supplier of water and that together serve 15 or more service connections or 25 or more persons daily at least 60 days out of the year.
- (3) "Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.
- (4) "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the department finds, after examination for efficacy under field conditions, and not solely under laboratory conditions, are available (taking cost into consideration). For purpose of setting maximum contaminant levels for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon.
- (5) "Certified Laboratory" shall mean any facility for performing bacteriological, chemical or other analyses on water which has received interim or final certification by either the Environmental Protection Agency or the division of health services laboratory section certification program.
- (6) "Class I reservoir" shall mean a reservoir from which water flows by gravity or is pumped directly to a treatment plant or to a small intervening storage basin and thence to a treatment plant.
- (7) "Class II reservoir" shall mean a reservoir from which the water flows by gravity or is pumped to a Class I reservoir prior to final entrance to a water treatment plant.
- (8) "Class III reservoir" is a large impoundment used for electric power generation, flood control, and similar purposes, and which also serves as a source of raw water for a community water system.
- (9) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.
- (10) ~~Commission~~ "Commission" means commission for health services as created by G.S. 143B-142.
- (11) "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.
- (12) ~~(10)~~ "Contaminant" means any physical, chemical, biological or radiological substance or matter in water.
- (13) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.
- (14) ~~(11)~~ "Cross-connection" shall mean:
 - (a) any physical connection between a potable water supply system and any other piping system, sewer fixture, container, or device, whereby water or other liquids, mixtures, or substances may flow into or enter the potable water supply system;
 - (b) any potable water supply outlet which is submerged or is designed or intended to be submerged in non-potable water or in any source of contamination or;
 - (c) an air gap, providing a space between the potable water pipe outlet and the flood level rim of a receiving vessel of less than twice the diameter of the potable water pipe.
- (15) ~~(12)~~ "Community Water System intake" shall mean the structure at the head of a conduit into which water is diverted from a stream or reservoir for transmission to water treatment facilities.
- (16) "CT" or "Ctcalc" is the product of "residual disinfectant concentration" (C) in mg/l determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T". If a public water system applies disinfectants at more than one point prior to the first customer, it must determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or "total inactivation ratio". In determining the total inactivation ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s). "CT99.9" is the CT value required for 99.9 percent (3-log) inactivation of *Giardia lamblia* cysts. CT99.9 for a variety of disinfectants and conditions appear in Tables 1.1-1.6.2.1, and 3.1 of 40 C.F.R. §141.74(b)(3) which are hereby adopted by reference in accordance with G.S. §150B-14(c).

CT calc

CT99.9

is the inactivation ratio. The sum of the inactivation ratios, or total inactivation ratio shown as:

(CTcalc)

(CT99.9)

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than 1.0 is assumed to provide a 3-log inactivation of Giardia lamblia cysts.

(17) ~~(13)~~ "Department" means the Department of Human Resources as created by G.S. 143B-136.

(18) "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which:

(a) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and

(b) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

(19) "Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

(20) ~~(14)~~ "Disinfectant" means any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(21) "Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured. Where only one "C" is measured, "T" is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration ("C") is measured. Where more than one "C" is measured, "T" is:

(a) for the first measurement of "C", the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured; and

(b) for subsequent measurements of "C" the time in minutes that it takes for water to move from the previous "C" measure-

ment point to the "C" measurement point for which the particular "T" is being calculated.

Disinfectant contact time in pipelines must be calculated based on "plug flow" by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

(22) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(23) "Domestic or other non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(24) ~~(15)~~ "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(25) "Fecal coliform" means bacteria consistently found in the intestine of man and other warm blooded animals which are not normally disease producing but serve as indicators of recent fecal contamination. They are members of the family Enterobacteriaceae, type Genus Escherichia.

(26) ~~(16)~~ "Federal act" means the Safe Drinking Water Act of 1974, as amended, cited as P.L. 93-523.

(27) ~~(17)~~ "Federal agency" means any department, agency or instrumentality of the United States.

(28) "Filtration" means a process for removing particulate matter from water by passage through porous media.

(29) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

(30) ~~(18)~~ "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(31) ~~(19)~~ "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(32) "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with:

- (a) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia, or
- (b) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

Direct influence must be determined for individual sources in accordance with criteria established by the Department. The Department determination of direct influence may be based on site-specific measurements of water quality and or documentation of well construction characteristics and geology with field evaluation.

(33) ~~(24)~~ "Halogen" means one of the chemical elements chlorine, bromine or iodine.

(34) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(35) ~~(24)~~ "Man-made beta particle and photon emitters" means all radionuclides emitting beta particles and or photons listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS HANDBOOK 69, except the daughter products of thorium 232, uranium 235 and uranium 238.

(36) ~~(22)~~ "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

(37) "Maximum Contaminant level goal" means the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. Exceeding the maximum contaminant level goal does not result in an enforceable violation by a supplier of water.

(38) ~~(23)~~ "Maximum Total Trihalomethane Potential (MTP)" means the maximum

concentration of total trihalomethanes produced in a given water containing a disinfectant residual after 7 days at a temperature of 25! C or above.

(39) ~~(24)~~ "National Primary Drinking Water Regulations" means primary drinking water regulations promulgated by the administrator pursuant to the federal act.

(40) "Near the first service connection" means at one of the 20 percent of all service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

(41) ~~(25)~~ "Non-potable water supply" shall mean waters not approved for drinking or other household uses.

(42) ~~(26)~~ "Person" means an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency, or other legal entity.

(43) ~~(27)~~ "Pecocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(44) "Point of disinfectant application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

(45) ~~(28)~~ "Point-of-Entry treatment device" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(46) ~~(29)~~ "Point-of-use treatment device" is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that tap.

(47) ~~(30)~~ "Potable water supply" shall mean water which is approved for drinking or other household uses.

(48) ~~(31)~~ "Public water system"

(a) "Public Water System" means a system, including an adjacent water system, for the provision to the public of piped water for human consumption if the system serves 15 or more service connections or regularly serves an average of 25 or more persons daily at least 60 days out of the year. The term includes:

- (i) any collection, treatment, storage, and distribution facility under control of the operator of such system and used primarily in connection with such system; and
- (ii) any collection or pre-treatment storage facility not under such control which is

- used primarily in connection with such system.
- (b) A public water system is either a "community water system," a "non-community water system" or a "non-transient, non-community water system":
- (i) "Community Water System" means a public water system which serves 15 or more service connections or which regularly serves at least 25 year-round residents.
 - (ii) "Non-Community Water System" means a public water system which is not a community water system.
 - (iii) "Non-transient, non-community water system" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons for six or more months per year.
- (49) ~~(32)~~ "Raw water" shall mean surface water or ground water which because of bacteriological quality, chemical quality, turbidity, color, or mineral content makes it unsatisfactory as a source for a community water system without treatment.
- (50) ~~(23)~~ "Raw water reservoir" shall mean a natural or artificial impoundment used for the primary purpose of storing raw water to be subsequently treated for use as a source for a community water system.
- (51) ~~(34)~~ "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1/1000 of a rem.
- (52) "Residual disinfectant concentration" ("C" in CT calculations) means the concentration of disinfectant measured in mg/l in a representative sample of water.
- (53) ~~(35)~~ "Sanitary survey" means an on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.
- (54) ~~(26)~~ "Secretary" means the executive officer of the Department of Human Resources or an authorized agent.
- (55) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.
- (56) "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 m/h) resulting in substantial particulate removal by physical and biological mechanisms.
- (57) ~~(27)~~ "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.
- (58) ~~(38)~~ "Supplier of water" means any person who owns, operates, or controls a public water system.
- (59) "Surface water" means all water which is open to the atmosphere and subject to surface runoff.
- (60) "System with a single service connection" means a system which supplies drinking water to consumers via a single service line.
- (61) "Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.
- (62) ~~(39)~~ "Total trihalomethanes" (TTHM) means the sum of the concentration in milligrams per liter of the trihalomethane compounds trichloromethane (chloroform), dibromochloromethane, bromodichloromethane and tribromomethane (bromoform)@, rounded to two significant figures. mechanisms.
- (63) ~~(40)~~ "Treatment technique requirement" means a requirement of the North Carolina Drinking Water Regulations which specifies for a contaminant a specific treatment technique which leads to a reduction of the level of such contaminant sufficient to comply with the requirements of this Section.
- (64) ~~(41)~~ "Trihalomethane" (THM) means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.
- (65) ~~(42)~~ "Unit of local government" means a county, city, consolidated city-county, sanitary district, or other local political subdivision, authority, or agency of local government.
- (66) ~~(43)~~ "Performance evaluation sample" means a reference sample provided to a laboratory for the purpose of demonstrating that the laboratory can successfully analyze the sample within limits of performance specified by the department. The true value of the concentration of the reference material is unknown to the laboratory at the time of the analysis.
- (67) "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.
- (68) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water sys-

tem which is deficient in treatment, as determined by the appropriate local or Department agency.

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 141.

SECTION .1500 - WATER QUALITY STANDARDS

.1503 MICROBIOLOGICAL CONTAMINANT SAMPLING AND ANALYSIS (REPEALED)

.1504 MAXIMUM MICROBIOLOGICAL CONTAMINANT LEVELS (REPEALED)

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1505 TURBIDITY SAMPLING AND ANALYSIS

(f) The requirements of this Rule apply to an unfiltered public water system until December 30, 1991. If the Department has determined that an unfiltered system must install filtration, the maximum contaminant level applies until June 29, 1993 or until filtration is installed whichever is later. The requirements of this Rule apply to a filtered public water system until June 29, 1993.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1506 MAXIMUM CONTAMINANT LEVELS FOR TURBIDITY

(a) The maximum contaminant levels for turbidity are applicable to both community water systems and non-community water systems using surface water sources in whole or in part. The maximum contaminant levels for turbidity in drinking water, measured at a representative entry point(s) to the distribution system, are:

(1) One turbidity unit (TU), as determined by a monthly average pursuant to .1623 of this Section except that five or fewer turbidity units may be allowed if the supplier of water can demonstrate to the department that the higher turbidity does not do any of the following:

(A) ~~(i)~~ interfere with disinfection,

(B) ~~(ii)~~ prevent maintenance of an effective disinfectant agent throughout the distribution system, or

(C) ~~(iii)~~ interfere with microbiological determinations.

(2) Five turbidity units based on an average for two consecutive days pursuant to .1623 of this Section.

(b) The maximum contaminant level for turbidity applies to an unfiltered public water

system until December 30, 1991. If the Department has determined that an unfiltered system must install filtration, the maximum contaminant level applies until June 29, 1993 or until filtration is installed whichever is later. The maximum contaminant level for turbidity applies to a filtered public water system until June 29, 1993.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1523 PUBLIC NOTICE

(a) The supplier of water shall provide notice to consumers served by a public water system when the system fails to comply with a maximum contaminant level or treatment technique established by this Subchapter or which fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption granted under this Subchapter as follows:

(1) For a community water system:

(D) For violations of the maximum contaminant levels of contaminants specified by the Department as posing an acute risk to human health and including:

(i) ~~for~~ violation of the maximum contaminant level for nitrate as defined in 40 C.F.R. §141.11(b) and determined according to 40 C.F.R. §141.23(d) which are hereby adopted by reference pursuant to G.S. 150B-14(c);

(ii) violation of the maximum contaminant level for total coliforms, when fecal coliforms or E. coli are present in the water distribution system, as specified in Rule .1534(b) of this Section; and

(iii) occurrence of a water borne disease outbreak in an unfiltered system subject to the requirements of 15A NCAC 18C .2001 through .2006 of the Subchapter, after December 30, 1991;

notice shall be given by furnishing a copy of the notice to the radio and television stations serving the area of the community water system as soon as possible but in no case later than 72 hours after the violation.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1525 REPORTING REQUIREMENTS

(b) Except where a shorter reporting period is specified in this part, the supplier of water shall report to the Department within 48 hours the failure to comply with any regulation of 40 NCAC 40D .1610 through .1634 15A NCAC

18C .1501 through .1534 of this Section (including failure to comply with monitoring requirements).

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.1532 VARIANCES AND EXEMPTIONS

Variances and exemptions from a maximum contaminant level or required treatment technique may be requested by a public water system and may be granted by the secretary in accordance with ~~40 NCAC 10D .2501 through .2511~~ 15A NCAC 18C .1601 through .1614, except that variances or exemptions from the maximum contaminant level for total coliforms and variances from any of the treatment technique requirements of 15A NCAC 18C .2001 through .2006 may not be granted.

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 141.

.1533 COLIFORM SAMPLING

(a) A supplier of water shall collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. These plans are subject to review and revision by the Department.

(b) The monitoring frequency for total coliforms for community water systems is based on the population served by the system, as follows:

Population served	Number of Samples per month
1 to 1000.....	1
1,001 to 2,500.....	2
2,501 to 3,300.....	3
3,301 to 4,100.....	4
4,101 to 4,900.....	5
4,901 to 5,800.....	6
5,801 to 6,700.....	7
6,701 to 7,600.....	8
7,601 to 8,500.....	9
8,501 to 12,900.....	10
12,901 to 17,200.....	15
17,201 to 21,500.....	20
21,501 to 25,000.....	25
25,001 to 33,000.....	30
33,001 to 41,000.....	40
41,001 to 50,000.....	50
50,001 to 59,000.....	60
59,001 to 70,000.....	70
70,001 to 83,000.....	80
83,001 to 96,000.....	90

96,001 to 130,000.....	100
130,001 to 220,000.....	120
220,001 to 320,000.....	150
320,001 to 450,000.....	180
450,001 to 600,000.....	210
600,001 to 780,000.....	240
780,001 to 970,000.....	270
970,001 to 1,230,000.....	300
1,230,001 to 1,520,000.....	330
1,520,001 to 1,850,000.....	360
1,850,001 to 2,270,000.....	390
2,270,001 to 3,020,000.....	420
3,020,001 to 3,960,000.....	450
3,960,001 or more.....	480

(c) The monitoring frequency for total coliforms for all non-community water systems is as follows:

- (1) A non-community water system using only ground water, except ground water under the direct influence of surface water, and serving 1,000 persons or fewer must monitor each calendar quarter that the system provides water to the public.
- (2) A non-community water system using only ground water, except ground water under the direct influence of surface water, and serving more than 1,000 persons during any month must monitor at the same frequency as a like-sized community water system, as specified in Paragraph (b) of this Rule.
- (3) A non-community water system using surface water, in total or in part, must monitor at the same frequency as a like-sized community water system, as specified in Paragraph (b) of this Rule, regardless of the number of persons it serves.
- (4) A non-community water system using ground water under the direct influence of surface water must monitor at the same frequency as a like-sized community water system, as specified in Paragraph (b) of this Rule. The system must begin monitoring at this frequency beginning six months after the Department determines that the ground water is under the direct influence of surface water.

(d) A public water system shall collect samples at regular time intervals throughout the month unless a system uses ground water, except ground water under the direct influence of surface water, and serves 4,900 persons or fewer, which may collect all required samples on a single day if they are taken from different sites.

(e) A public water system that uses surface water or ground water under the direct influence

of surface water, and does not practice filtration in compliance with 15A NCAC 18C .2001 through .2006 shall collect at least one sample near the first service connection each day the turbidity level of the source water, measured as specified in 15A NCAC 18C .2006(b), exceeds 1 NTU. This sample must be analyzed for the presence of total coliforms. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within 24 hours of the first exceedance, unless the Department determines that the system, for logistical reasons outside the system's control, cannot have the sample analyzed within 30 hours of collection. Sample results from this coliform monitoring must be included in determining compliance with the maximum contaminant level for total coliforms in 15A NCAC 18C .1534.

(f) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the maximum contaminant level for total coliforms in 15A NCAC 18C .1534. Repeat samples taken pursuant to Paragraph (g) of this Rule are not considered special purpose samples, and shall be used to determine compliance with the maximum contaminant level for total coliforms in 15A NCAC 18C .1534.

(g) If a routine sample is total coliform-positive, the public water system shall collect a set of repeat samples within 24 hours of being notified of the positive result. A system which collects more than one routine sample month shall collect no fewer than three repeat samples for each total coliform-positive sample found. A system which collects one routine sample month or fewer shall collect no fewer than four repeat samples for each total coliform-positive sample found. The Department may extend the 24-hour limit on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control. The Department will specify in the extension how much time the system has to collect the repeat samples. Repeat samples shall be collected as follows:

- (1) The system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a total coliform-positive sample is at the

end of the distribution system, or one away from the end of the distribution system, the Department may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site.

- (2) The system must collect all repeat samples on the same day, except that the Department may allow a system with a single service connection to collect the required set of repeat samples over a four-day period or to collect a larger volume repeat sample(s) in one or more sample containers of any size, as long as the total volume collected is at least 400 ml (300 ml for systems which collect more than one routine sample month).
- (3) If one or more repeat samples in the set is total coliform-positive, the public water system must collect an additional set of repeat samples in the manner specified in Paragraphs (g)(1) - (3) of this Rule. The additional samples must be collected within 24 hours of being notified of the positive result, unless the Department extends the limit as provided in Paragraph (g)(1) of this Rule. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the maximum contaminant level for total coliforms in 15A NCAC 18C .1534 has been exceeded and notifies the Department.
- (4) If a system collecting fewer than five routine samples month has one or more total coliform-positive samples and the Department does not invalidate the sample(s) under Paragraph (h) of this Rule, it must collect at least five routine samples during the next month the system provides water to the public, except that the Department may waive this requirement if the conditions of 40 C.F.R. §141.21(b)(5)(i) or (ii) are met, which is hereby adopted by reference in accordance with G.S. 150B-14(c). The Department may not waive the requirement for a system to collect repeat samples in Paragraphs (g)(1) - (4) of this Rule.
- (5) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subse-

quent sample(s) as a repeat sample instead of as a routine sample.

- (6) Results of all routine and repeat samples not invalidated by the Department must be included in determining compliance with the maximum contaminant level for total coliforms in this Rule.

(h) A total coliform-positive sample invalidated under this Paragraph does not count towards meeting the minimum monitoring requirements of this Rule. Samples are invalidated as follows:

- (1) The Department may invalidate a total coliform-positive sample in accordance with 40 C.F.R. §141.21(c)(1) which is hereby adopted by reference in accordance with G.S. 150B-14(c). A copy of the procedure is available from the Public Water Supply Section, P.O. Box 27687, Raleigh, N.C. 27611-7687.
- (2) A laboratory shall invalidate a total coliform sample, unless total coliforms are detected, if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a laboratory invalidates a sample because of such interference, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system must continue to re-sample within 24 hours and have the samples analyzed until it obtains a valid result. The Department may waive the 24-hour time limit on a case-by-case basis.

(i) Public water systems which do not collect five or more routine samples per month shall undergo an initial sanitary survey by June 29, 1994 for community public water systems and June 29, 1999 for non-community water systems. Thereafter, systems must undergo another sanitary survey every five years, except that non-community water systems using only protected and disinfected ground water as defined by the Department, shall undergo subsequent sanitary surveys at least every ten years after the initial sanitary survey. The Department will review the results of each sanitary survey to determine whether the existing monitoring frequency is ad-

equated and what additional measures, if any, the system needs to undertake to improve drinking water quality. In conducting a sanitary survey of a system using ground water, information on sources of contamination within the delineated wellhead protection area that was collected in the course of developing and implementing an EPA-approved wellhead protection program under the federal Safe Drinking Water Act §1428 should be considered instead of collecting new information, if the information was collected since the last time the system was subject to a sanitary survey. Sanitary surveys will be performed by the Department or an agent approved by the Department. The supplier is responsible for ensuring the survey takes place.

(j) If any routine or repeat sample is total coliform-positive, the supplier of water shall analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the supplier of water may test for *E. coli* in lieu of fecal coliforms. If fecal coliforms or *E. coli* are present, the supplier of water shall notify the Department by the end of the day when the system is notified of the test result. If the system is notified of the result after the Department office is closed the supplier shall notify the Department before the end of the next business day. The Department may allow a public water system, on a case-by-case basis, to forego fecal coliform or *E. coli* testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is fecal coliform-positive or *E. Coli*-positive. Accordingly, the system shall notify the Department as specified in this Paragraph and the provisions of 15A NCAC 18C .1534 apply.

(k) The standard sample volume required for total coliform analysis, regardless of analytical method used, is 100 ml. Only the presence or absence of total coliforms is determined. A determination of total coliform density is not required. Total coliform analyses shall be performed in accordance with analytical methods for total coliform in 40 C.F.R. §141.21(f) which is hereby adopted by reference in accordance with G.S. 150B-14(c). A list of these methods and the procedure is available from the Public Water Supply Section, P.O. Box 27687, Raleigh, NC 27611-7687. Fecal coliform analyses in accordance with analytical methods for fecal coliform in 40 C.F.R. 141.21(f) are hereby adopted by reference in accordance with G.S. 150B-14(c). A list of these methods and the procedure is available from the Public Water Supply Section, P.O. Box 27687, Raleigh, NC 27611-7687.

(l) A public water system which has exceeded the maximum contaminant level for total

coliforms in 15A NCAC 18C .1534 shall report the violation to the Department no later than the end of the next business day after it learns of the violation, and notify the public in accordance with 15A NCAC 18C .1523. A public water system which has failed to comply with a coliform monitoring requirement, including the sanitary survey requirement, must report the monitoring violation to the Department with ten days after the system discovers the violation, and notify the public in accordance with 15A NCAC 18C .1523.

Authority G.S. 130A-315; P.L. 53-523; 40 C.F.R. 141.

.1534 MAXIMUM CONTAMINANT LEVELS FOR COLIFORM BACTERIA

(a) The maximum contaminant level for microbiological contaminants is based on the presence or absence of total coliforms in a sample, rather than coliform density and shall be determined as follows:

- (1) for a system which collects at least 40 samples for month, if no more than 5.0 percent of the samples collected during a month are total coliform-positive, the system is in compliance with the maximum contaminant level for total coliforms;
- (2) for a system which collects fewer than 40 samples month, if no more than one sample collected during a month is total coliform-positive, the system is in compliance with the maximum contaminant level for total coliforms.

(b) Any fecal coliform-positive repeat sample or *E. coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample constitutes a violation of the maximum contaminant level for total coliforms. For purposes of the public notification requirements in 15A NCAC 18C .1523, this is a violation that may pose an acute risk to health.

(c) A public water system must determine compliance with the maximum contaminant level for total coliforms in Paragraphs (a) and (b) of this Rule for each month in which it is required to monitor for total coliforms.

(d) The Secretary hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms in Paragraphs (a) and (b) of this Rule:

- (1) protection of wells from contamination by coliforms by appropriate placement and construction;
 - (2) maintenance of a disinfectant residual throughout the distribution system;
 - (3) proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system;
 - (4) filtration and/or disinfection of surface water, as described in 15A NCAC 18C .2001 through .2006, or disinfection of ground water using strong oxidants such as chlorine, chlorine dioxide, or ozone; or
 - (5) the development and implementation of an EPA-approved State Wellhead Protection Program under §1428 of the Safe Drinking Water Act, 42 U.S.C. 300f, et seq.
- (e) Maximum contaminant level goals for microbiological contaminants are as follows:

Contaminant	MCLG
(1) <i>Giardia lamblia</i>	zero
(2) Viruses	zero
(3) <i>Legionella</i>	zero

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

SECTION .2000 - FILTRATION AND DISINFECTION

.2001 GENERAL REQUIREMENTS

(a) Each public water system with a surface water source or a ground water source under the direct influence of surface water must provide treatment of that source water which complies with these treatment technique requirements. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

- (1) at least 99.9 percent (3-log) removal and or inactivation of *Giardia lamblia* cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer; and
- (2) at least 99.99 percent (4-log) removal and or inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(b) A public water system using a surface water source or a ground water source under the direct influence of surface water is considered to be in compliance with the requirements of Paragraph (a) of this Rule if:

- (1) it meets the requirements for avoiding filtration in 15A NCAC 18C .2005 and the disinfection requirements in 15A NCAC 18C .2002(c); or
- (2) it meets the filtration requirements in 15A NCAC 18C .2003 and the disinfection requirements in 15A NCAC 18C .2002(d).

(c) Each public water system using a surface water source or a ground water source under the direct influence of surface water must be operated by a certified operator in accordance 15A NCAC 18C .1301 through .1303.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.2002 DISINFECTION

(a) A public water system that uses a surface water source and does not provide filtration treatment must provide the disinfection treatment specified in Paragraph (c) of this Rule beginning December 30, 1991, unless the Department determines that filtration is required in writing pursuant to the federal Safe Drinking Water Act §1412(b)(7)(C)(iii). A public water system that uses a ground water source under the direct influence of surface water and does not provide filtration treatment must provide disinfection treatment specified in Paragraph (c) of this Rule beginning December 30, 1991, or 18 months after the Department determines that the ground water source is under the influence of surface water, whichever is later, unless the Department has determined that filtration is required in writing pursuant to the federal Safe Drinking Water Act, §1412(b)(7)(C)(iii). If the Department has determined that filtration is required the system must comply with any interim, disinfection requirements the Department deems necessary before filtration is installed.

(b) A public water system that uses a surface water source and provides filtration treatment must provide the disinfection treatment specified in Paragraph (d) of this Rule beginning June 29, 1993, or beginning when filtration is installed, whichever is later. A system that uses a ground water source under the direct influence of surface water and provides filtration treatment must provide disinfection treatment as specified in Paragraph (d) of this Rule by June 29, 1993, or beginning when filtration is installed, whichever is later. Failure to meet any requirement of this

Rule after the applicable date specified in this Paragraph is a treatment technique violation.

(c) Each public water system that does not provide filtration treatment must provide disinfection treatment in accordance with procedures in 40 C.F.R. §141.72(a) which is hereby adopted by reference in accordance with G.S. 150B-14(c), except that:

- (1) When chlorine is the singular applied disinfectant, the residual disinfectant concentration entering the distribution system shall not be less than 0.2 mg/l free chlorine. When ammonia and chlorine are applied disinfectants the residual disinfectant concentration entering the distribution system shall not be less than 2.0 mg/l as combined chlorine; and
- (2) When chlorine is the singular applied disinfectant, the residual disinfectant in the distribution system shall not be less than 0.2 mg/l as free chlorine in more than 5 percent of the samples each month and when ammonia and chlorine are applied disinfectants, the residual disinfectant shall not be less than 2.0 mg/l as combined chlorine in more than 5 percent of the samples each month.

(d) Each public water system that provides filtration treatment must provide disinfection treatment as follows:

- (1) the disinfection treatment must be sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent (3-log) inactivation and or removal of *Giardia lamblia* cysts and at least 99.99 percent (4-log) inactivation and or removal of viruses, as determined by the Department.
- (2) the residual disinfectant concentration in the water entering the distribution system, measured as specified in 15A NCAC 18C .2004(a) and (c)(2), cannot be less than 0.2 mg/l for more than 4 hours, except that the requirements of Paragraph (c)(1) of this Rule shall apply.
- (3) the residual disinfectant concentration in the distribution system, measured as total chlorine, free combined, combined chlorine, or chlorine dioxide, as specified in 15A NCAC 18C .2004(a) and (c)(3), cannot be undetectable in more than five percent of the samples each month, for any two consecutive months that the system serves water to the public, except that the requirements of Paragraph (c)(2) of this Rule shall apply. Water in the distribution system with a heterotrophic bacteria concentration less than or equal

to 500 ml, measured as heterotrophic plate count (HPC) as specified in §141.74(a)(3), is deemed to have a detectable disinfectant residual for purposes of determining compliance with this requirement, except as required in this Rule. Thus, the value "V" in the following formula cannot exceed five percent in one month, for any two consecutive months.

$$V = \frac{c + d + e}{a + b} \times 100$$

where:

a = number of instances where the residual disinfectant concentration is measured;

b = number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

c = number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

d = number of instances where no residual disinfectant concentration is detected and where the HPC is greater than 500 ml; and

e = number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500 ml.

If the Department determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in 15A NCAC 18C .2004(a) and that the system is providing adequate disinfection in the distribution system, the requirements of Paragraph (d)(3) of this Rule do not apply.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.2003 FILTRATION

(a) A public water system that uses a surface water source or a ground water source under the direct influence of surface water, and does not meet all of the criteria in 15A NCAC 18C .2005 for avoiding filtration, must provide treatment consisting of disinfection as specified in 15A NCAC 18C .2002 and filtration treatment which complies with the requirements of this Rule by June 29, 1993, or within 18 months of the failure to meet any one of the criteria for avoiding filtration, whichever is later. Failure to meet any requirement of this Rule after the date specified

in this Paragraph is a treatment technique violation.

(b) Public water systems using conventional filtration or direct filtration shall meet the following criteria:

(1) The turbidity level of representative samples of a system's filtered water must be less than or equal to 0.5 NTU in at least 95 percent of the measurements taken each month, measured as specified in 15A NCAC 18C .2004, except that if the Department determines that the system is capable of achieving at least 99.9 percent removal and or inactivation of *Giardia lamblia* cysts at some turbidity level higher than 0.5 NTU in at least 95 percent of the measurements taken each month, the Department may substitute this higher turbidity limit for that system. However, in no case may the Department approve a turbidity limit that allows more than 1 NTU in more than five percent of the samples taken each month, measured as specified in 15A NCAC 18C .2004.

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU, measured as specified in 15A NCAC 18C .2004.

(c) Public water systems using slow sand filtration shall meet the following criteria:

(1) The turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured as specified in 15A NCAC 18C .2004 except that if the Department determines there is no significant interference with disinfection at a higher turbidity level, the Department may substitute this higher turbidity limit for that system.

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU, measured as specified in 15A NCAC 18C .2004.

(d) Public water systems using diatomaceous earth filtration shall meet the following criteria:

(1) The turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured as specified in 15A NCAC 18C .2004.

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU, measured as specified in 15A NCAC 18C .2004.

(c) A public water system may use a filtration technology not listed in Paragraphs (b) - (d) of this Rule if it demonstrates to the Department, using pilot plant studies or other means, that the alternative filtration technology, with disinfection treatment in accordance with 15A NCAC 18C .2002, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses. The requirements of Paragraph (c) of this Rule shall apply to an alternative filtration technology.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.2004 ANALYTICAL AND MONITORING REQUIREMENTS

(a) Only the analytical methods specified in this Paragraph, or otherwise approved by the Environmental Protection Agency, may be used to demonstrate compliance with the requirements of Rules .2002, .2003 and .2005 of this Section. Measurements for pH, temperature, turbidity, and residual disinfectant concentrations shall be conducted by a party approved by the Department. Measurements for total coliforms, fecal coliforms and HPC must be conducted by a laboratory certified by the Department to do such analysis. Until laboratory certification criteria are developed for the analysis of HPC and fecal coliforms any laboratory certified for total coliform analysis by the Department is deemed certified for HPC and fecal coliform analysis. Analytical procedures shall be conducted in accordance with requirements in 40 C.F.R. §141.74(a) which are hereby adopted by reference in accordance with G.S. 150B-14(c).

(b) A public water system that uses a surface water source and does not provide filtration treatment must begin monitoring, as specified in this Paragraph beginning December 31, 1990 unless the Department has determined that filtration is required in writing, in which case the Department may specify alternative monitoring requirements, as appropriate, until filtration is in place. A public water system that uses a ground water source under the direct influence of surface water and does not provide filtration treatment must begin monitoring specified in this Paragraph beginning December 31, 1990 or six months after the Department determines that the ground water source is under the direct influence of surface water, whichever is later. If the Department has determined that filtration is required in writing pursuant to the federal Safe Drinking Water Act §1412(b)(7)(C)(iii), in which case the Department may specify alternative

monitoring requirements as appropriate until filtration is in place. Monitoring shall be conducted in accordance with requirements set forth in 40 C.F.R. 141.74(b)(1) through (6) which is hereby adopted by reference in accordance with G.S. 150B-14(c).

(c) A public water system that uses a surface water source or a ground water source under the influence of surface water and provides filtration treatment must monitor in accordance with this Paragraph beginning June 29, 1993, or when filtration is installed, whichever is later. Monitoring shall be conducted as follows:

- (1) Turbidity measurements as required by 15A NCAC 18C .2002 must be performed on representative samples of the system's filtered water every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the Department. For any systems using slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the Department may reduce the sampling frequency to once per day if it determines that less frequent monitoring is sufficient to indicate effective filtration performance. For systems serving 500 or fewer persons, the Department may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the Department determines that less frequent monitoring is sufficient to indicate effective filtration performance.
- (2) The residual disinfectant concentration of the water entering the distribution system must be monitored continuously, and the lowest value must be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment. Systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequency of every four hours that water is being treated.
- (3) The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sam-

pled, as specified in 15A NCAC 18C .1533, except that the Department may allow a public water system which uses both a surface water source or a ground water source under direct influence of surface water, and a ground water source to take disinfectant residual samples at point other than the total coliform sampling points if the Department determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in Paragraph (a) of this Rule, may be measured in lieu of residual disinfectant concentration.

If the Department determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by Paragraph (a) of this Rule and that the system is providing adequate disinfection in the distribution system, the requirements of Paragraph (c)(3) of this Rule do not apply to that system.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.2005 CRITERIA FOR AVOIDING FILTRATION

(a) A public water system is not required to provide filtration if it meets all criteria of 40 C.F.R. §141.71(a) and (b) which is hereby adopted by reference in accordance with G.S. 150B-14(c). A public water system that uses a surface water source must meet all of the requirements for avoiding filtration and is subject to Paragraph (b) of this Rule, beginning December 30, 1991, unless the Department has determined in writing pursuant to the federal Safe Drinking Water Act §1412(b)(7)(C)(iii), that filtration is required. A public water system that uses a ground water source under the direct influence of surface water must meet all of the requirements for avoiding filtration and is subject to Paragraph (b) of this Rule, beginning 18 months after the Department determines that it is under the direct influence of surface water, or December 30, 1991, whichever is later, unless the Department has determined, in writing, that filtration is required. When the Department determines in writing before December 30, 1991, that filtration is required, the system must have installed filtration and meet the criteria for filtered systems specified in 15A NCAC 18C .2002 and .2003 by June 29, 1993. Within 18 months of the

failure of a system using surface water or a ground water source under the direct influence of surface water to meet any one of the requirements for avoiding filtration or after June 29, 1993, whichever is later, the system must have installed filtration and meet the criteria for filtered systems specified in 15A NCAC 18C .2002 and .2003.

(b) The following are considered treatment technique violations:

- (1) a public water system that fails to meet any one of requirements for avoiding filtration or which the Department has determined must provide filtration in writing pursuant to the federal Safe Drinking Water Act §1412(b)(7)(C)(iii), and fails to install filtration by the date specified in Paragraph (a) of this Rule is in violation of a treatment technique requirement;
- (2) a public water system that meets the requirements for avoiding filtration violates the treatment technique requirement if:
 - (A) the turbidity level, measured as specified in 15A NCAC 18C .2004, in a representative sample of the source water immediately prior to the first or only point of disinfection application exceeds five NTU; or
 - (B) the public water system is identified as a source of a waterborne disease outbreak.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

.2006 REPORTING AND RECORDKEEPING REQUIREMENTS

(a) A public water system that uses a surface water source and which does not provide filtration treatment must report monthly to the Department beginning December 31, 1990. A public water system that uses a ground water source under the direct influence of surface water and does not provide filtration treatment must report monthly to the Department beginning December 31, 1990, or six months after the Department determines that the ground water source is under the direct influence of surface water, whichever is later. If the Department has determined that a public water system must provide filtration pursuant to the federal Safe Drinking Water Act §1412(b)(7)(C)(iii), the Department may specify alternative reporting requirements, as appropriate, until filtration is in place. Source water quality and disinfection information must be reported to the Department within ten days after the end of each month the system serves water to the public. The reports

shall include information required by 40 C.F.R. §141.75(a) which is hereby adopted by reference in accordance with G.S. 150B-14(c).

(b) A public water system that uses a surface water source or a ground water source under the direct influence of surface water and provides filtration treatment shall report monthly to the Department beginning June 29, 1993 or when

filtration is installed, whichever is later. The reports shall include the information required by 40 C.F.R. §141.75(b) which is hereby adopted by reference in accordance with G.S. 150B-14(c).

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Please contact this office if you have any questions.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

*Punctuation, typographical and technical changes to rules are incorporated into the List of Rules Codified and are noted as * Correction. These changes do not change the effective date of the rule.*

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES CODIFIED

JULY 1990

AGENCY		ACTION TAKEN	
<u>DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT</u>			
4	NCAC	3A .0101	Amended
		3C .0501 - .0502	Repealed
		.0503	Adopted
		.0701 - .0703	Amended
		.0704 - .0705	Repealed
		.1302	Amended
		.1401 - .1402	Amended
		.1601	Adopted
		16A .0103 - .0105	Amended
		.0201 - .0203	Adopted
		.0301	Adopted
		.0401	Adopted
		.0403	Adopted
		.0404 - .0409	Adopted
		16B .0001 - .0002	Amended
		16C .0101	Amended
		.0201	Amended
		.0304 - .0305	Adopted
		.0401 - .0403	Amended
		.0501	Amended
		.0503	Amended
		16D .0101	Amended
		.0102	Repealed
		.0104	Repealed
		.0202	Amended
		.0301	Amended
		.0403 - .0405	Amended

FINAL RULES

		.0406	Repealed
		.0407	Amended
		.0408	Repealed
		.0503	Repealed
		.0505	Repealed
		.0601 - .0602	Repealed
		.0806 - .0807	Amended
		.0901	Amended
		.0902	Adopted
16F		.0001 - .0002	Amended
		.0004	Repealed
		.0005	Amended
16I1		.0001	Amended
		.0007	Amended
16I		.0701	Repealed
		.0702 - .0703	Amended
		.0704	Adopted
		.0801 - .0803	Amended
		.0901 - .0902	Amended
		.0903 - .0904	Repealed
		.1001	Amended
		.1003	Amended
		.1101 - .1102	Amended
		.1104 - .1106	Amended
		.1201 - .1203	Adopted
		.1301 - .1302	Adopted
16I		.0001 - .0002	Amended
18		.0203	Amended
		.0204	Adopted
		.0303	Amended
		.0308	Adopted

OFFICES OF GOVERNOR/LIEUTENANT GOVERNOR

9	NCAC	2B	Executive Order Number 117 Eff. May 30, 1990 Executive Order Number 118 Eff. June 12, 1990 Executive Order Number 119 Eff. June 18, 1990
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DEPARTMENT OF HUMAN RESOURCES

10	NCAC	3I	.2303	* Correction
			.3403	* Correction
			.3908	* Correction
			.3919	* Correction
			.3925	* Correction
10	NCAC	14A	.1301 - .1302	Amended
			.1304	Amended
			.1307 - .1309	Amended
			.1311 - .1312	Amended
			.1314	Repealed
			.1315	Amended
		14L	.0203	Amended
			.0306	Amended
		18M	.1301	Repealed
		18Q	.0801	Amended
		20C	.0105	* Correction

FINAL RULES

	.0311	* Correction
	.0401	Amended
	.0402 - .0407	Repealed
	.0408	Amended
	.0409	Repealed
	.0410 - .0411	Amended
	.0412 - .0413	Repealed
20D	.0101	Amended
	.0102 - .0103	Repealed
	.0201	* Correction
	.0202	Amended
	.0203 - .0204	* Correction
	.0205	Repealed
	.0206	* Correction
	.0301 - .0302	* Correction
	.0303 - .0304	* Correction
	.0305	Repealed
	.0306 - .0308	* Correction
22G	.0906	Adopted
23B	.0101	* Correction
	.0402 - .0403	* Correction
24A	.0605 - .0606	* Correction
29B	.0008	* Correction
35A	.0002	Repealed
41N	.0101 - .0102	Amended
	.0201	Repealed
	.0202 - .0203	Amended
	.0204	Repealed
	.0205	Amended
	.0207 - .0208	Repealed
	.0209 - .0210	Amended
41O	.0101	Amended
	.0201	Amended
42A	.0308 - .0310	Amended
42B	.0902 - .0903	Amended
	.0906	Amended
	.1102	Amended
	.1201	Amended
	.1208	Adopted
	.1707	Amended
	.1903	Amended
	.2101	Amended
42C	.1803 - .1804	Repealed
	.1901	Amended
	.2001 - .2002	Amended
	.2006 - .2007	Amended
	.2008 - .2009	Adopted
	.2101 - .2102	Amended
	.2202 - .2203	Amended
	.2205 - .2207	Amended
	.2213	Amended
	.2215	Amended
	.2301 - .2303	Amended
	.2401 - .2402	Amended
	.2404 - .2405	Amended
	.2501	Amended
	.2504	Repealed
	.2505	Amended
	.2601	Repealed

FINAL RULES

	.2602 - .2603	Amended
	.2703	Amended
	.3001	Amended
	.3003	Amended
	.3101	Amended
	.3201	* Correction
	.3202	Amended
	.3301 - .3302	Amended
	.3304	Amended
	.3402 - .3403	Amended
	.3405	Amended
	.3502	Amended
42D	.1301	Amended
	.1407	Amended
	.1502 - .1503	Amended
	.1602	Amended
	.1605	Amended
42E	.0704 - .0705	Amended
	.0801	Amended
	.0901 - .0902	Amended
	.0905 - .0906	Amended
	.1001 - .1002	Amended
	.1101	Amended
	.1104	Amended
	.1108	Amended
	.1110	Amended
	.1207	Amended
	.1402 - .1406	Amended
42F	.0006 - .0007	Amended
42H	.0203	Amended
	.0401	Amended
42I	.0002	Amended
42J	.0001	Amended
	.0004 - .0009	Amended
	.0011	Amended
42K	.0201	Amended
	.0503	Repealed
	.0602	Amended
42L	.0008 - .0009	Amended
	.0011 - .0012	Amended
42N	.0001 - .0002	Amended
42O	.0102 - .0103	Amended
	.0104	Repealed
	.0105	Amended
42P	.0701	Repealed
42Q	.0011	Amended
	.0014	Amended
42R	.0201	Amended
42S	.0401	Amended
	.0602 - .0603	Amended
42T	.0001	Amended
	.0003	Amended
42V	.0201	Amended
	.0203	Amended
	.0206	Amended
	.0401	Amended
	.0501 - .0503	Amended
	.0601	Amended
	.0701 - .0702	Amended

FINAL RULES

	.0905	Amended
43L	.0101 - .0103	Repealed
	.0201	* Correction
	.0202 - .0205	Repealed
	.0301 - .0303	Repealed
	.0401	Amended
	.0402 - .0404	Repealed
44A	.0001 - .0002	Repealed
44B	.0101	Amended
	.0102	Repealed
	.0103	Amended
	.0201	Amended
	.0203 - .0204	Amended
	.0302	Amended
	.0305 - .0306	Amended
	.0401 - .0402	Amended
	.0501 - .0503	Amended
	.0505	Amended
	.0507	Amended
	.0509	Amended
	.0514	Amended
	.0516 - .0519	Amended
44C	.0101	Repealed
	.0102	Amended
	.0103	Repealed
	.0202 - .0203	Amended
	.0301 - .0303	Amended
	.0401	Amended
	.0406	Amended
	.0702 - .0703	Amended
	.0710	Amended
	.0801	Amended
	.0803	Amended
	.0901	Amended
	.1002 - .1003	Amended
	.1005	Repealed
	.1101 - .1104	Amended
	.1204	* Correction
	.1301 - .1302	Amended
	.1303 - .1304	Repealed
	.1305	Amended
	.1401 - .1407	Amended
	.1411	Amended
	.1501 - .1505	Amended
	.1601 - .1602	Amended
44D	.0103 - .0104	Amended
	.0106	Amended
	.0108	Amended
	.0203 - .0204	Amended
	.0206 - .0207	Amended
44E	.0001	Amended
	.0003 - .0004	Amended
	.0006 - .0007	Amended
	.0009 - .0010	Amended
44F	.0101 - .0102	Repealed
	.0301	Amended
	.0402 - .0403	Amended
	.0502 - .0504	Amended
	.0602	Amended

FINAL RULES

	.0605	Amended
	.0607 - .0609	Amended
	.0701 - .0702	Amended
	.0703	* Correction
	.0803	Amended
	.0901 - .0902	Amended
	.1004	Amended
	.1007	Amended
	.1101 - .1104	Amended
	.1201 - .1208	Amended
	.1301	Amended
	.1304	Amended
	.1306 - .1307	Amended
	.1401 - .1403	Amended
	.1505	Amended
	.1507 - .1509	Amended
	.1601	Amended
	.1603	Amended
	.1705	Amended
46A	.0001	Amended
46B	.0101 - .0104	Repealed
	.0201	Repealed
	.0203 - .0207	Repealed
	.0301 - .0303	Repealed
46C	.0101	Repealed
	.0105 - .0107	Amended
	.0201 - .0202	Repealed
	.0301 - .0308	Repealed
	.0401 - .0405	Repealed
	.0501	Repealed
46D	.0103	Amended
	.0106 - .0107	Amended
	.0201	Amended
46E	.0108 - .0109	Amended
	.0110	Repealed
	.0112	Amended
	.0304	Repealed
46F	.0107	Amended
	.0109	Repealed
	.0111	Amended
	.0201 - .0202	Repealed
	.0601 - .0604	Repealed
	.0701 - .0709	Repealed
46G	.0101	Amended
	.0102	Repealed
	.0103 - .0105	Amended
	.0107	Repealed
	.0201	Amended
	.0206 - .0212	Repealed
46H	.0101	Amended
	.0104 - .0105	Amended
	.0107 - .0108	Amended
	.0201	Amended
	.0301 - .0304	Amended
49B	.0312	Amended
49C	.0103	* Correction
	.0105 - .0106	* Correction
	.0301 - .0302	Amended
	.0401	* Correction

.0501 * Correction
49E .0003 Amended

DEPARTMENT OF INSURANCE

11	NCAC	6A	.0201	* Correction
			.0210 - .0211	* Correction
			.0213 - .0214	* Correction
			.0217	* Correction
			.0220	* Correction
			.0222	* Correction
			.0224 - .0235	* Correction
			.0237	* Correction
			.0302 - .0303	* Correction
			.0504	* Correction
			.0507	* Correction
			.0603 - .0604	* Correction
			.0801 - .0811	Temp. Adopted
				Expires 12-19-90
		10	.1102	Amended
		12	.0801 - .0814	Temp. Repealed
				Expires 12-10-90
			.0815 - .0833	Temp. Adopted
				Expires 12-10-90

DEPARTMENT OF JUSTICE

12	NCAC	7D	.0202	Amended
			.0702	Amended
			.0802	Amended
		9A	.0201 - .0206	Amended
		9B	.0101	Amended
		9C	.0306 - .0307	Amended
			.0309	Amended
			.0310	Adopted
		10B	.0204	Amended
			.0301	Amended
			.0406	Amended
			.0409	Adopted

DEPARTMENT OF LABOR

13	NCAC	7C	.0101	Amended
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DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

15A	NCAC	2B	.0303	Amended
			.0310	Amended
		2F	.0101	Amended
			.0103 - .0104	Amended
		7J	.0204	Amended
			.0210 - .0211	Adopted
			.0301 - .0302	Amended
			.0602	Amended
		7M	.0306	Adopted
		10B	.0202 - .0203	Amended
			.0209	Amended
		10C	.0205	Amended
			.0301	Amended

FINAL RULES

	.0305	Amended
	.0404	Amended
	.0407	Amended
10D	.0002 - .0004	Amended
10H	.0301	* Correction
10I	.0005	* Correction
18A	.1961	Temp. Amended
		Expires 12-27-90

DEPARTMENT OF PUBLIC EDUCATION

16	NCAC	6C	.0310	Amended
		6E	.0202	Amended

DEPARTMENT OF REVENUE

17	NCAC	4A	.0001 - .0007	* Correction
		4B	.0103	Repealed
			.0110	Repealed
			.0308 - .0309	Amended
			.0313	* Correction
			.0501	Repealed
			.0503	Repealed
			.0505	Repealed
			.1101	Repealed
			.1304	Repealed
			.1305	Amended
			.1307 - .1309	Repealed
			.1502	Repealed
			.1601	Amended
			.1706	Amended
			.1810	Amended
			.1901	Repealed
			.2105	Repealed
			.2113	* Correction
			.2114	Amended
			.2115	Repealed
			.2116 - .2117	Amended
			.2201	Repealed
			.2206	Repealed
			.2701 - .2703	Repealed
			.3005	Repealed
			.3408	Amended
			.3412 - .3413	Amended
			.3903	Repealed
			.4402	Amended
			.4501 - .4505	Amended
			.4506	* Correction
			.4507	Amended
			.4508 - .4513	* Correction
			.4514 - .4521	Amended
		4E	.0105	Repealed
			.0209	Amended
		7B	.3401	Amended
			.4301	Amended
			.4601 - .4602	Amended
			.4604	Amended
			.4606	Amended
			.4609	Amended

FINAL RULES

.4610	Repealed
.4612 - .4615	Amended
.4616	Repealed
.4617	Amended
.5401	Amended
.5439	Amended
.5447 - .5448	Adopted

SECRETARY OF STATE

18	NCAC	4	.0101 - .0102	Temp. Amended Expires 12-27-90
			.0201 - .0204	* Correction
			.0205 - .0206	Temp. Amended Expires 12-27-90
			.0301	Temp. Repealed Expires 12-27-90
			.0302 - .0303	Temp. Amended Expires 12-27-90
			.0304	* Correction
			.0305 - .0308	Temp. Amended Expires 12-27-90
			.0309	* Correction
			.0310	Temp. Repealed Expires 12-27-90
			.0311 - .0314	Temp. Amended Expires 12-27-90
			.0315	Temp. Repealed Expires 12-27-90
			.0316	Temp. Adopted Expires 12-27-90
			.0401 - .0402	Temp. Amended Expires 12-27-90
			.0501 - .0504	Temp. Amended Expires 12-27-90
		6	.1210	Temp. Adopted Expires 12-08-90

BOARD OF COSMETIC ART EXAMINERS

21	NCAC	14F	.0004	Amended
		14K	.0007	Adopted

BOARD OF PLUMBING AND HEATING CONTRACTORS

21	NCAC	50	.0306	* Correction
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REAL ESTATE COMMISSION

21	NCAC	58C	.0202	Adopted
			.0203 - .0205	Amended
			.0214	Amended
			.0217 - .0218	Amended

OFFICE OF STATE PERSONNEL

25	NCAC	1D	.0303	Amended
			.0308	Amended
			.0406	Amended

FINAL RULES

.0605	Amended
.0609	Amended
.0706 - .0708	Amended

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

ECONOMIC AND COMMUNITY DEVELOPMENT

Savings Institutions Division

- 4 NCAC 16A .0302 - Response of Administrator to Petition ARRC Objection 5 17 90
4 NCAC 16A .0402 - Informal Settlement ARRC Objection 5 17 90

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Health

- 15A NCAC 18A .1814 - Disposal of Garbage and Trash: Premises ARRC Objection 6 21 90
15A NCAC 18C .1528 - Point-of-Entry and Other Treatment Devices ARRC Objection 6 21 90

Environmental Management

- 15A NCAC 21 .0102 - General Criteria ARRC Objection 5 17 90
15A NCAC 21 .0105 - Effective Contingent Upon Federal Funds Allocated ARRC Objection 5 17 90

Health: Epidemiology

- 15A NCAC 19B .0202 - Granting Permits ARRC Objection 6 21 90
15A NCAC 19D .0407 - Medical Eligibility ARRC Objection 6 21 90
15A NCAC 19D .0408 - Medical Eligibility Licensed Nursing Home Services ARRC Objection 6 21 90

Laboratory Services

- 15A NCAC 20A .0002 - Definitions ARRC Objection 6 21 90

Wildlife Resources Commission

- 15A NCAC 10C .0501 - Scope and Purpose ARRC Objection 6 21 90

HUMAN RESOURCES

Medical Assistance

- 10 NCAC 50B .0311 - Reserve ARRC Objection 6 21 90

Youth Services

- 10 NCAC 44F .1305 - Corporal Punishment and Child Abuse ARRC Objection 5 17 90

LICENSING BOARDS AND COMMISSIONS

Certification Board for Social Work

- 21 NCAC 63 .0104 - Organization of the Board ARRC Objection 5 17 90
21 NCAC 63 .0301 - Written Examinations ARRC Objection 5 17 90
21 NCAC 63 .0403 - Renewal Fees ARRC Objection 5 17 90

PUBLIC EDUCATION

Elementary and Secondary Education

16 NCAC 6D .0105 - Use of School Day

ARRC Objection 6/21/90

SECRETARY OF STATE

Corporations Division

18 NCAC 4 .0101 - Location and Hours

ARRC Objection 6/21/90

18 NCAC 4 .0102 - Administration and Functions

ARRC Objection 6/21/90

18 NCAC 4 .0205 - Overpayment

ARRC Objection 6/21/90

18 NCAC 4 .0206 - Documents Not Specifically Provided For

ARRC Objection 6/21/90

18 NCAC 4 .0302 - Execution

ARRC Objection 6/21/90

18 NCAC 4 .0303 - Rejection

ARRC Objection 6/21/90

18 NCAC 4 .0305 - Corrective Filings-Nonprofit Corp Limited Partnerships

ARRC Objection 6/21/90

18 NCAC 4 .0306 - Articles of Incorporation - Nonprofit Corporations

ARRC Objection 6/21/90

18 NCAC 4 .0307 - Application For Reservation of Corporate Name

ARRC Objection 6/21/90

18 NCAC 4 .0308 - Registered Office and Registered Agent

ARRC Objection 6/21/90

18 NCAC 4 .0311 - Art of Merger Share Exch G.S. 55-11-07 55A-42.1

ARRC Objection 6/21/90

18 NCAC 4 .0312 - Appl For Cert of Authority Foreign Prof Corporation

ARRC Objection 6/21/90

18 NCAC 4 .0313 - Filing Merger Involving Foreign Corporation

ARRC Objection 6/21/90

18 NCAC 4 .0314 - Filing Evidence of Dissolution Foreign Nonprofit Corp

ARRC Objection 6/21/90

18 NCAC 4 .0316 - Form for Annual Report

ARRC Objection 6/21/90

18 NCAC 4 .0401 - Documents

ARRC Objection 6/21/90

18 NCAC 4 .0402 - Cert of Facts Certificate of Exit Authorization

ARRC Objection 6/21/90

18 NCAC 4 .0501 - General

ARRC Objection 6/21/90

18 NCAC 4 .0502 - Words Prohibited in Addition to Statutory Prohibitions

ARRC Objection 6/21/90

18 NCAC 4 .0503 - Deceptively Similar and Distinguishable Names

ARRC Objection 6/21/90

18 NCAC 4 .0504 - Filing Fictitious Assumed Name Foreign Corporation

ARRC Objection 6/21/90

Securities Division

18 NCAC 6 .1210 - Securities Exchgs Auto Quotation Sys Approve Admin

ARRC Objection 6/21/90

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 3R .0317(g) - WITHDRAWAL OF A CERTIFICATE

Robert Roosevelt Reilly, Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Dawn Health Care, a North Carolina General Partnership, Petitioner v. Department of Human Resources, Certificate of Need Section, Respondent* (90 DHHR 0296).

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Architecture	2
2	Agriculture	Auctioneers	4
3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
10	Human Resources	Foresters	20
11	Insurance	Geologists	21
12	Justice	Hearing Aid Dealers and Fitters	22
13	Labor	Landscape Architects	26
14A	Crime Control and Public Safety	Landscape Contractors	28
15A	Environment, Health, and Natural Resources	Marital & Family Therapy	31
16	Public Education	Medical Examiners	32
17	Revenue	Midwifery Joint Committee	33
18	Secretary of State	Mortuary Science	34
19A	Transportation	Nursing	36
20	Treasurer	Nursing Home Administrators	37
*21	Occupational Licensing Boards	Occupational Therapists	38
22	Administrative Procedures	Opticians	40
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